ment and Budget, Washington, DC 20503, telephone (202) 395-3993.

[¶ 830]

10. **Policy Review Date.** OMB Circular A-87 will have a policy review three years from the date of issuance.

[¶ 831]

11. **Effective Date.** This Circular is effective as follows:

—For costs charged indirectly or otherwise covered by the cost allocation plans described in Attachments C, D, and E, this revision shall be applied to cost allocation plans and indirect cost proposals submitted or prepared for a governmental unit's fiscal year that begins on or after September 1, 1995.

—For other costs, this revision shall be applied to all awards or amendments, including continuation or renewal awards, made on or after September 1, 1995.

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Attachment A

General Principles for Determining Allowable Costs

[¶ 832]

A. Purpose and Scope

1. *Objectives.* This Attachment establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this Circular as "Federal awards"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of this Circular.

2. *Policy guides.* a. The application of these principles is based on the fundamental premises that:

(1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.

(2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. *Application.* a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal awards (including subawards) except those with (1) Publicly-financed educational institutions subject to OMB Circular A-21, "Cost Principles for Educational Institutions," and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Attachment; if a subaward is to some other non-profit organization, Circular A-122, "Cost Principles for Non-Profit Organizations," shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs under CAS-covered contracts. The agreement shall indicate that OMB Circular A-87 requirements will be applied to other Federal awards. In

all cases, only one set of records needs to be maintained by the governmental unit.

[¶ 833]

B. Definitions

1. *Approval or authorization of the awarding or cognizant Federal agency* means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. *Award* means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.

3. *Awarding agency* means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency and (b) with respect to a subaward, the party that awarded the subaward.

4. *Central service cost allocation plan* means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.

5. *Claim* means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal awarding agency.

6. *Cognizant agency* means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Circular on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.

7. *Common Rule* means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034-8103 (March 11, 1988). Other common rules will be referred to by their specific titles.

8. *Contract* means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 et seq.

9. *Cost* means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.

10. *Cost allocation plan* means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms are further defined in this section.

11. *Cost objective* means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. *Federally-recognized Indian tribal government* means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. *Governmental unit* means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. *Grantee department or agency* means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

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15. *Indirect cost rate proposal* means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

16. *Local government* means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. *Public assistance cost allocation plan* means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

18. *State* means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

[¶ 834]

C. Basic Guidelines

1. *Factors affecting allowability of costs.* To be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

b. Be allocable to Federal awards under the provisions of this Circular.

c. Be authorized or not prohibited under State or local laws or regulations.

d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.

e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.

f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.

h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.

i. Be the net of all applicable credits.

j. Be adequately documented.

2. *Reasonable costs.* A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally-funded. In determining reasonableness of a given cost, consideration shall be given to:

a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.

b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.

c. Market prices for comparable goods or services.

d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.

e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. *Allocable costs.* a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal

awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E.

4. *Applicable credits.* a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Attachment B, item 16, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

[¶ 835]

D. Composition of Cost

1. *Total cost.* The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

[¶ 836]

E. Direct Costs

1. *General.* Direct costs are those that can be identified specifically with a particular final cost objective.

2. *Application.* Typical direct costs chargeable to Federal awards are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the award.

3. *Minor items.* Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

[¶ 837]

F. Indirect Costs

1. *General.* Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. *Cost allocation plans and indirect cost proposals.* Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.

3. *Limitation on indirect or administrative costs.* a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.

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b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

[¶ 838]

G. Interagency Services

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Attachment C.

[¶ 839]

H. Required Certifications

Each cost allocation plan or indirect cost rate proposal required by Attachments C and E must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C and E. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.

2. No cost-allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

Attachment B

Selected Items of Cost

[¶ 839A]

Sections 1 through 42 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems is allowable.

2. *Advertising and public relations costs.* a. The term "advertising costs" means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. Advertising costs are allowable only when incurred for the recruitment of personnel, the procurement of goods and services, the disposal of surplus materials, and any other specific purposes necessary to meet the requirements of the Federal award. Advertising costs associated with the disposal of surplus materials are not allowable where all disposal costs are reimbursed based on a standard rate as specified in the grants management common rule.

d. Public relations costs are allowable when:

(1) Specifically required by the Federal award and then only as a direct cost;

(2) Incurred to communicate with the public and press pertaining to specific activities or accomplishments that result from performance of the Federal award and then only as a direct cost; or

(3) Necessary to conduct general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c. and d.;

(2) Except as otherwise permitted by these cost principles, costs of conventions, meetings, or other events related to other activities of the governmental unit including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs; and

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

3. *Advisory councils.* Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

4. *Alcoholic beverages.* Costs of alcoholic beverages are unallowable.

5. *Audit services.* The costs of audits are allowable provided that the audits were performed in accordance with the Single Audit Act, as implemented by Circular A-128, "Audits of State and Local Governments." Generally, the percentage of costs charged to Federal awards for a single audit shall not exceed the percentage derived by dividing Federal funds expended by total funds expended by the recipient or subrecipient (including program matching funds) during the fiscal year. The percentage may be exceeded only if appropriate documentation demonstrates higher actual costs.

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Other audit costs are allowable if specifically approved by the awarding or cognizant agency as a direct cost to an award or included as an indirect cost in a cost allocation plan or rate.

6. *Automatic electronic data processing.* The cost of data processing services is allowable (but see section 19, Equipment and other capital expenditures).

7. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable unless provided for in Federal program award regulations.

8. *Bonding costs.* Costs of bonding employees and officials are allowable to the extent that such bonding is in accordance with sound business practice.

9. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable.

10. *Communications.* Costs of telephone, mail, messenger, and similar communication services are allowable.

11. *Compensation for personnel services.* a. *General.* Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. *Reasonableness.* Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. *Unallowable costs:* Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. *Fringe benefits.* (1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 25, Insurance and indemnification); pension plan costs (see subsection e.); and other simi-

lar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. *Pension plan costs.* Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. *Post-retirement health benefits.* Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection e. for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written polices of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. *Severance pay.* (1) Payments in addition to regular salaries and wages made to work-

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ers whose employment is being terminated are allowable to the extent that, in each case, they are required by (a) law, (b) employer-employee agreement, or (c) established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. *Support of salaries and wages.* These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

(b) A Federal award and a non-Federal award,

(c) An indirect cost activity and a direct cost activity,

(d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Aid to Families with Dependent Children (AFDC), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (c);

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection (a) may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. *Donated services.* (1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

12. *Contingencies.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, or intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see subsection 25.c.), pension plan reserves (see subsection 11.e.), and post-retirement health and other benefit reserves (see subsection 11.f.) computed using acceptable actuarial cost methods.

13. *Contributions and donations.* Contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable.

14. *Defense and prosecution of criminal and civil proceedings, and claims.* a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

15. *Depreciation and use allowances.* a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefitting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.) except as provided in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

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(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding $6^2/_3$ percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the $6^2/_3$ percent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used. Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

f. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

16. *Disbursing service.* The cost of disbursing funds by the Treasurer or other designated officer is allowable.

17. *Employee morale, health, and welfare costs.* The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications, and any related expenses incurred in accordance with a governmental unit's policy are allowable. Income generated from any of these activities will be offset against expenses.

18. *Entertainment.* Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

19. *Equipment and other capital expenditures.* a. As used in this section the following terms have the meanings as set forth below:

(1) *Capital expenditure* means the cost of the asset including the cost to put it in place. Capital expenditure for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the governmental unit's regular accounting practices.

(2) *Equipment* means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) $5000.

(3) *Other capital assets* mean buildings, land, and improvements to buildings or land that materially increase their value or useful life.

b. Capital expenditures which are not charged directly to a Federal award may be recovered through use allowances or depreciation on buildings, capital improvements, and equipment (see section 15). See also section 38 for allowability of rental costs for buildings and equipment.

c. Capital expenditures for equipment, including replacement equipment, other capital assets, and improvements which materially increase the value or useful life of equipment or other capital assets are allowable as a direct cost when approved by the awarding agency. Federal awarding agencies are authorized at their option to waive or delegate this approval requirement.

d. Items of equipment with an acquisition cost of less than $5000 are considered to be supplies and are allowable as direct costs of Federal awards without specific awarding agency approval.

e. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by (1) continuing to claim the otherwise allowable use allowances or depreciation charges on the equipment or by (2) amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

f. When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

20. *Fines and penalties.* Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

21. *Fund raising and investment management costs.* a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this Circular are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Attachment A.

22. *Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs.* a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 15 and 19.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 25.a

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(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a., e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

23. *General government expenses.* a. The general costs of government are unallowable (except as provided in section 41). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executives of federally-recognized Indian tribal governments;

(2) Salaries and other expenses of State legislatures, tribal councils, or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction;

(3) Cost of the judiciary branch of a government;

(4) Cost of prosecutorial activities unless treated as a direct cost to a specific program when authorized by program regulations (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost in program regulations.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

24. *Idle facilities and idle capacity.* a. As used in this section the following terms have the meanings set forth below:

(1) *Facilities* means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) *Idle facilities* means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) *Cost of idle facilities or idle capacity* means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

25. *Insurance and indemnification.* a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims (a) submitted and adjudicated but not paid, (b) submitted but not adjudicated, and (c) incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 11.f. for post retirement health benefits), are allowable in the year of payment provided (1) the governmental unit follows a consistent costing policy and (2) they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection d.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

26. *Interest.* a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically

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provided in subsection b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable, subject to the conditions in (1)—(4). Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with otherwise allowable costs of equipment is allowable, subject to the conditions in (1)—(4).

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) Governmental units will negotiate the amount of allowable interest whenever cash payments (interest, depreciation, use allowances, and contributions) exceed the governmental unit's cash payments and other contributions attributable to that portion of real property used for Federal awards.

27. *Lobbying.* The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

28. *Maintenance, operations, and repairs.* Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 15 and 19).

29. *Materials and supplies.* The cost of materials and supplies is allowable. Purchases should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing, consistently applied. Incoming transportation charges are a proper part of materials and supply costs.

30. *Memberships, subscriptions, and professional activities.* a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences where the primary purpose is the dissemination of technical information, including meals, transportation, rental of meeting facilities, and other incidental costs are allowable.

d. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.

e. Costs of membership in organizations substantially engaged in lobbying are unallowable.

31. *Motor pools.* The costs of a service organization which provides automobiles to user governmental units at a mileage or fixed rate and/or provides vehicle maintenance, inspection, and repair services are allowable.

32. *Pre-award costs.* Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

33. *Professional service costs.* a. Cost of professional and consultant services rendered by persons or organizations that are

members of a particular profession or possess a special skill, whether or not officers or employees of the governmental unit, are allowable, subject to section 14 when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

b. Retainer fees supported by evidence of bona fide services available or rendered are allowable.

34. *Proposal costs.* Costs of preparing proposals for potential Federal awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

35. *Publication and printing costs.* Publication costs, including the costs of printing (including the processes of composition, platemaking, press work, and binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling are allowable.

36. *Rearrangements and alterations.* Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

37. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

38. *Rental costs.* a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-arms-length leases include, but are not limited to, those where:

(1) One party to the lease is able to control or substantially influence the actions of the other;

(2) Both parties are parts of the same governmental unit; or

(3) The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. This amount would include expenses such as depreciation or use allowance, maintenance, and insurance. The provisions of Financial Accounting Standards Board Statement 13 shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 26.

39. *Taxes.* a. Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision becomes effective for taxes paid during the governmental unit's first fiscal year that begins on or after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

40. *Training.* The cost of training provided for employee development is allowable.

41. *Travel costs.* a. *General.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees traveling on official business. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and

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results in charges consistent with those normally allowed in like circumstances in non-federally-sponsored activities. Notwithstanding the provisions of section 23, travel costs of officials covered by that section, when specifically related to Federal awards, are allowable with the prior approval of a grantor agency.

b. *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of the governmental unit's policy. In the absence of a written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57 of Title 5, United States Code "Travel and Subsistence Expenses; Mileage Allowances," or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter shall be used as guidance for travel under Federal awards (41 U.S.C. 420, "Travel Expenses of Government Contractors").

c. *Commercial air travel.* Airfare costs in excess of the customary standard (coach or equivalent) airfare, are unallowable except when such accommodations would: require circuitous routing, require travel during unreasonable hours, excessively prolong travel, greatly increase the duration of the flight, result in increased cost that would offset transportation savings, or offer accommodations not reasonably adequate for the medical needs of the traveler. Where a governmental unit can reasonably demonstrate to the awarding agency either the nonavailability of customary standard airfare or Federal Government contract airfare for individual trips or, on an overall basis, that it is the governmental unit's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the Federal Government, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable, e.g., use of first-class airfare, the governmental unit must justify and document on a case-by-case basis the applicable condition(s) set forth above.

d. *Air travel by other than commercial carrier.* Cost of travel by governmental unit-owned, -leased, or -chartered aircraft, as used in this section, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, interest, insurance, and other related costs. Costs of travel via governmental unit-owned, -leased, or -chartered aircraft are unallowable to the extent they exceed the cost of allowable commercial air travel, as provided for in subsection c.

42. *Underrecovery of costs under Federal agreements.* Any excess costs over the Federal contribution under one award agreement are unallowable under other award agreements.

Attachment C

State/Local-Wide Central Service Cost Allocation Plans

[¶ 839B]

A. General

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

[¶ 839C]

B. Definitions

1. *Billed central services* means central services that are billed to benefitted agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

2. *Allocated central services* means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. *Agency or operating agency* means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

[¶ 839D]

C. Scope of the Central Service Cost Allocation Plans

The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

[¶ 839E]

D. Submission Requirements

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the FEDERAL REGISTER.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Circular and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

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[¶ 839F]

E. Documentation Requirements for Submitted Plans

The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. *General.* All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Circular, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. *Allocated central services.* For each allocated central service, the plan must also include the following: a brief description of the service *, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. *Billed services.* a. *General.* The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. *Internal service funds.* (1) For each internal service fund or similar activity with an operating budget of $5 million or more, the plan shall include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Circular, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. *Self-insurance funds.* For each self-insurance fund, the plan shall include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. *Fringe benefits.* For fringe benefit costs, the plan shall include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies *; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information

shall be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. *Required certification.* Each central service cost allocation plan will be accompanied by a certification in the following form:

Certificate of Cost Allocation Plan

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of OMB Circular A-87, "Cost Principles for State and Local Governments," and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

[¶ 839G]

F. Negotiation and Approval of Central Service Plans

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to reopening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

[¶ 839H]

G. Other Policies

1. *Billed central service activities.* Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. *Working capital reserves.* Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by

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the cognizant Federal agency in exceptional cases.

3. *Carry-forward adjustments of allocated central service costs.* Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. *Adjustments of billed central services.* Billing rates used to charge Federal awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds $500,000.

5. *Records retention.* All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

6. *Appeals.* If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. *OMB assistance.* To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

Attachment D

Public Assistance Cost Allocation Plans

[¶ 839I]

A. General

Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Attachment extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Aid to Families with Dependent Children, Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

[¶ 839J]

B. Definitions

1. *State public assistance agency* means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR Part 95. For the purpose of this Attachment, these programs include all programs administered by the State public assistance agency.

2. *State public assistance agency costs* means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

[¶ 839K]

C. Policy

State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Attachment (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

[¶ 839L]

D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

[¶ 839M]

E. Review of Implementation of Approved Plans

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or

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more funding agencies, the dispute shall be resolved in accordance with the appeals procedures set out in 45 CFR Part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

[¶ 839N]

F. Unallowable Costs

Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Circular. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual awards.

Attachment E

State and Local Indirect Cost Rate Proposals

[¶ 839 O]

A. General

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment C) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This Attachment does not apply to State public assistance agencies. These agencies should refer instead to Attachment D.

[¶ 839P]

B. Definitions

1. *Indirect cost rate proposal* means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. *Indirect cost rate* is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

3. *Indirect cost pool* is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. *Base* means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. *Predetermined rate* means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

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6. *Fixed rate* means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. *Provisional rate* means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

8. *Final rate* means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

9. *Base period* for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

[¶ 839Q]

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. *General.* a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3, and 4.

2. *Simplified method.* a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the grantee agency's total costs for the base period as either direct or indirect and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. *Multiple allocation base method.* a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation shall be made in that manner. When

the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and the like) and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. *Special indirect cost rates:* a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) the rate differs significantly from the rate which would have been developed under subsections 2. and 3. and (2) the award to which the rate would apply is material in amount.

b. Although this Circular adopts the concept of the full allocation of indirect costs, there are some Federal statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award. Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

[¶ 839R]

D. Submission and Documentation of Proposals

1. *Submission of indirect cost rate proposals.* a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of this Circular and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department

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of the Interior (its cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. *Documentation of proposals.* The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. *Required certification.* Each indirect cost rate proposal shall be accompanied by a certification in the following form:

Certificate of Indirect Costs

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and OMB Circular A-87, "Cost Principles for State and Local Governments." Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

[¶ 8398]

E. Negotiation and Approval of Rates

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to reopening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal agencies for their use.

4. Refunds shall be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

[¶ 840]

F. Other Policies

1. *Fringe benefit rates.* If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. *Billed services provided by the grantee agency.* In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental unit should be guided by the requirements in Attachment C relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. *Indirect cost allocations not using rates.* In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.

4. *Appeals.* If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

5. *Collection of unallowable costs and erroneous payments.* Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).

6. *OMB assistance.* To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

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PUBLIC HEARING

COMMISSION ON STATE MANDATES

---oOo---

TIME: 9:30 a.m.

DATE: July 27, 2000

PLACE: State Capitol, Room 126

CERTIFIED COPY

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

---oOo---

Reported By: STACEY L. HEFFERNAN CSR, RPR
No. 10750

A P P E A R A N C E S

---oOo---

COMMISSIONERS PRESENT

ANNETTE PORINI, Chair
Representative for B. TIMOTHY GAGE, Director
State Department of Finance

ALBERT P. "AL" BELTRAMI,
Public Member

WILLIAM SHERWOOD,
Representative for PHILIP ANGELIDES
State Treasurer's Office

JOANN STEINMEIER,
School Board Member
Arcadia Unified School District

JOHN S. LAZAR, CITY Council Member, CITY OF TURLOCK
~~Acting Director of Office Planning and Research~~

CINDI ARONBERG,
Deputy State Controller
Representative for KATHLEEN CONNELL, State Controller
State Controller's Office

HEATHER A. HALSEY,
Legislative Analyst and Associate Deputy
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PUBLIC TESTIMONY

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//

PUBLIC TESTIMONY

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(For San Diego Unified School District)

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(For San Diego Unified School District)

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San Diego City Schools, Education Center
(For San Diego Unified School District)

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(Representing Claimants on Item # 6 and Representing
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1 MS. HIGASHI: Item 4 will be presented by staff
2 counsel, David Scribner.
3 CHAIRPERSON PORINI: Mr. Scribner.
4 MR. SCRIBNER: Good morning. "The test claim
5 legislation and regulations established a program related to
6 achievement testing that school districts must administer to
7 pupils in the state, the Standardized Testing and Reporting
8 Program, or (STAR) Program. The STAR Program requires school
9 districts, between March 15 and May 15 of each year, to test
10 all students in grades 2 through 11 with a nationally normed
11 achievement test designated by the State Board of Education.
12 School districts are also required to engage in numerous
13 activities related to test administration and reporting.
14 "Staff finds that immediately before the enactment
15 of the test claim legislation, state law did not require
16 school districts to administer achievement tests to pupils.
17 Rather, prior law set up an incentive program for school
18 districts that administer achievement tests to all pupils in
19 grades 2 through 10. Former Education Code section 60640
20 provided $5 per pupil tested to those districts that
21 certified to the Superintendent of Public Instruction that it
22 would administer achievement tests to all pupils in grades 2
23 through 10. Staff also finds that the test claim legislation
24 did not itself include 'additional revenue that was
25 specifically intended to fund the costs of the state mandate
26 in an amount sufficient to fund the cost of the state
27 mandate.' Thus, staff finds that Government Code section
28 17556, subdivision (e), is inapplicable to this test claim.

"Accordingly, staff finds that the test claim legislation imposed costs mandated by the state upon school districts. Staff concludes that funds received by school districts for the administration of the STAR Program pursuant to the State Board of Education's reimbursement rate should be offset against total claim amounts for this test claim.

"Staff recommends that the Commission approve this test claim for the activities listed on pages 3 and 11 of the staff analysis."

Please state your name for the record.

MR. CUNNINGHAM: Jim Cunningham, San Diego Unified School District, test claimant.

MR. KNOTT: Rick Knott, Controller, San Diego Unified School District.

MR. RAINES: Bob Raines, Testing Program Manager for the San Diego Unified School District.

MS. OROPEZA: Jeannie Oropeza, Department of Finance.

MR. ZERVINKA: Pete Zervinka, Department of Finance.

CHAIRPERSON PORINI: All right. Would you like to open, Mr. Cunningham?

MR. CUNNINGHAM: Please. We recommend that you adopt the staff recommendation with two subsequent changes on Bates page 12, the first and fourth bullet pointed paragraphs. We request that you delete the two sentences that read, "Cost associated with teacher time to administer the tests are not reimbursable"; it's the same sentence in

1 both of these two bullet-pointed paragraphs.

2 These two sentences in the proposed document are not
3 supported by evidence; further, these sentences, if adopted,
4 would adopt the plain language of Article XIII(b) section 6
5 of the California Constitution and the intent of this
6 constitutional provision. Section 6 requires the state to
7 reimburse school districts for the costs of any new program
8 or higher level of service imposed on school districts with
9 certain exceptions not applicable here. The California
10 courts have consistently held that Section 6 is intended to
11 prevent the state from forcing a program on school districts
12 without paying for the cost of the program.

13 The staff's recommendation would do just that, it
14 would force the STAR program on school districts and would
15 not reimburse us for a substantial cost that is part of that
16 program. The state could have implemented this STAR program
17 using state employees to administer the tests. If they had
18 done so, then the state will incur this cost. There's no
19 valid reason that because they chose to use school district
20 employees to carry out their tests that they should void
21 reimbursement for those costs.

22 With me, this morning, I have Rick Knott, the
23 controller of San Diego Unified School District. Mr. Knott
24 is an expert in school finance with over 30 years of school
25 finance and auditing experience. Mr. Knott also is an
26 instructor on school finance at U.C. San Marcos, has a
27 bachelor's degree in accounting and a master's degree in
28 education and administration.

1 Mr. Knott will testify on the standard cost
2 accounting principles and practices both in the field of
3 school, finance and also in the field of general accounting.
4 Also with me today is Mr. Bob Raines, the testing
5 program manager for San Diego Unified School District.
6 Mr. Raines has a bachelor's of arts degree in mathematics
7 and a master's of arts degree in secondary administration.
8 Mr. Raines has served with the district for 21 years and has
9 managed the district's testing unit for the last six years.
10 Mr. Raines will briefly explain the administration of his
11 STAR program, the costs associated with the administration of
12 the STAR program and is available to answer any questions you
13 may have regarding the STAR Program.
14 And, with that, I'd like to turn the floor over to
15 Mr. Knott.
16 CHAIRPERSON PORINI: All right. Mr. Knott.
17 MR. KNOTT: Thank you very much. Good morning,
18 ladies and gentlemen. Just to correct the record, it's Cal
19 State University, San Marcos. I don't think they think of
20 themselves as part of the U.C. system yet.
21 For those of you who don't find cost accounting on
22 the preferred list of reading for night activities, I'd like
23 to just go through and discuss a little bit about the cost
24 accounting principals. Generally speaking, what I'm going to
25 focus on are the guidelines that we school districts in
26 public government have to focus on.
27 I would like to cite for your example, for instance,
28 the State Administrative Manual, section 6610, which is

1 published by the Department of Finance wherein they define
2 cost to be "the redirection of existing staff and/or
3 resources to an activity"; further, in that manual, they
4 indicate that "direct costs do include personnel needed to
5 perform a line function or activity as prescribed."
6 Continuing on in the same manual published by the
7 Department of Finance, in section 9200 through 9240, they
8 speak of cost accounting principles as "those that require
9 that any cost which can be identified directly to a program
10 be charged to that program." In this particular case, the
11 teachers are involved in the program that we have here before
12 you, the STAR testing.
13 "Typical cost accounting procedure for allocation of
14 salaries and wages is to charge a program with a number of
15 hours taken up by that particular program," and that is, in
16 fact, what we seek to do, the time spent by district
17 employees and the activities is what we seek to claim.
18 Continuing in section 8752.1 of the Department of
19 Finance under the state policy for the recovery of full costs
20 by state agencies, it is described "that personnel service
21 costs incurred and meeting the cost objective are part of the
22 direct cost to be recovered by state departments." So their
23 own guidelines call upon the state agencies to charge labor
24 cost directly.
25 Under the State Accounting Manual, which is
26 published by the California Department of Education, which
27 all the public school districts in California must comply
28 with, in section 702, direct costs are described to be "Those

1 that are charged to the benefitted program," and an example
2 is given, "Example of cost easily identified with a
3 particular program are teachers' salaries," in the State
4 Accounting Manual.
5 Finally, turning to the federal sector, the Office
6 of Management and Budget publishes numerous circulars, and,
7 in Circular A-21, which deals with cost principles for
8 educational institutions, and, in A-87, cost principles for
9 state, local and gaming and Indian tribe governments, direct
10 labor costs are defined to be "Those costs that are
11 identified with a particular activity including compensation
12 of the employees for the time devoted to the activity."
13 So, by the state's own directions that we have in
14 their manuals, the time spent by teachers in performing this
15 activity are allowable costs for that particular activity.
16 Thank you.
17 MR. CUNNINGHAM: Thank you. I'll turn it over to
18 Mr. Raines to give a brief description of the STAR program.
19 CHAIRPERSON PORINI: Mr. Raines.
20 MR. RAINES: Good morning, ladies and gentlemen.
21 The STAR Program is the most extensive statewide testing
22 program in the history of California. In our district, it
23 involves ten grade levels and approximately a hundred
24 thousand students.
25 The extensive and detailed requirements related to
26 administration, reporting and processing and the newly
27 imposed penalties for incomplete or incorrect demographic
28 reporting have contributed greatly to the complexity of this

1 program.

2 The coordination involves several areas: One is
3 staff development of site testing coordinators and teachers
4 in the areas of appropriate test preparation guidelines,
5 security procedures and administration, consultation with
6 school personnel on ongoing basis relative to appropriate and
7 inappropriate test preparation materials and activities,
8 ensuring proper test security procedures are observed at
9 schools relative to storage and distribution of test
10 materials, the collection and redeployment of the answer
11 documents for the augmented content tests, appropriate
12 administration of practice tests and sample items and
13 appropriate handling of student answer documents.

14 Another area is ensuring that proper test
15 administration procedures are followed at schools in
16 accordance with California Department of Education and
17 Publisher Guidelines, ensuring that demographic information,
18 which now represents 17 distinct fields on every answer
19 document, is properly coded on answer documents, that means
20 the necessity to pre-code answer documents for most students,
21 handcoding answer documents for students new to the district
22 or the school since, approximately, January of the school
23 year, and for demographic fields that may not be carried on
24 the district database, and, of course, processing answer
25 documents for quality control.

26 A final area involves investigation of testing
27 irregularities followed by the California Department of
28 Education and subsequent special coding of the answer

1 documents in those cases.

2 Thank you.

3 MR. CUNNINGHAM: Thank you.

4 CHAIRPERSON PORINI: All right. Mr. Cunningham,

5 have you completed?

6 MR. CUNNINGHAM: Yeah. Again, our recommendation

7 would be to adopt the staff recommendation excluding the two

8 sentences at the end of those two bullet pointed paragraphs.

9 CHAIRPERSON PORINI: All right. Department of

10 Finance, Ms. Oropeza?

11 MS. OROPEZA: If I could respond to the first

12 comment that was made by the claimants, in terms of -- while

13 we would agree that you can point to or determine which costs

14 that teachers and administrators are using to directly

15 administer the program, the statute that authorized the

16 program allows districts to administer the tests during a

17 regular day of instruction.

18 So, to the extent that the claimants are alleging

19 that this is not being paid, then they would have to be

20 offset by the money that we're paying them for a regular day

21 of instruction, which they can't be doing both activities at

22 the same time. Therefore, we believe that while they can

23 directly claim for the administration of the program then

24 they would have to offset the costs by not complying with

25 providing the regular minutes of instruction.

26 However, we contend that because the statute

27 authorizes that they do provide or administer the tests

28 during the regular school year, we are, in essence, paying

1 what we paid for, like we do for regular minutes of
2 instruction, therefore, we find that it's not reimbursable
3 since we're already paying for it.
4 The other thing that we'd like to point out is that
5 in many cases districts complain that the state develops or
6 establishes new programs and then doesn't pay for them. In
7 this case, we believe that the legislature and the
8 administration did the right thing by setting aside monies
9 specifically to administer the STAR Program, and we believe
10 that once you take out the fact that administering the
11 program is not reimbursable, we provided more than sufficient
12 funds to cover the costs of the district.
13 If you look at their Exhibit H, which outlines the
14 cost, if you backed out the cost of the teachers and the
15 administrators, it is very evident that we are providing more
16 than sufficient funds to cover all the costs that are being
17 claimed that we believe are reimbursable; therefore, we think
18 that the staff analysis incorrectly says that we need to
19 provide more money in the legislation, because the costs --
20 or the funding that we provided isn't sufficient, and,
21 therefore, we don't think this is a reimbursable mandate for
22 that reason.
23 The staff analysis is claiming that this statute did
24 not provide additional funding, which we don't believe is
25 necessary, since we believe we funded the costs up front
26 through the Budget Act for this program.
27 MR. CUNNINGHAM: Can we respond?
28 CHAIRPERSON PORINI: Well, let's see.

1 Mr. Zervinka, did you want to --

2 MR. ZERVINKA: No.

3 CHAIRPERSON PORINI: All right. Mr. Cunningham.

4 MR. CUNNINGHAM: All right. Well, the staff has

5 done the proper analysis. Again, they've looked at the

6 section that addresses -- in your statutes that addresses

7 offsets, and it requires the Department of Finance to prove

8 three things: One is that the statute or executive order

9 that imposed the mandate included the additional revenue;

10 second, that the additional revenue was specifically intended

11 to fund the costs of the mandate; and, third, that the

12 additional revenue was sufficient to cover the entire cost of

13 the mandate.

14 Now, if the Department of Finance cannot prove any

15 one of those three things, their argument must fail. In

16 fact, they cannot prove even one of those three. Section --

17 or Chapter 828 of the Statutes of 1997 is the statute that

18 imposed this mandate. There is no appropriations of funds in

19 Chapter 828. This, alone, would defeat their argument.

20 In our test claim, we've acknowledged that in the

21 Budget Act the state did appropriate 6 -- up to $8 per test,

22 however, those funds are not sufficient and they are not in

23 the bill that adopted the mandate. We have always taken the

24 position that whatever funds we receive through that budget

25 bill, though, the $6, now our district is limited to $2,

26 would be a proper offset against the claim but it does not

27 defeat the test claim.

28 Secondly, nowhere has the Department of Finance

1 provided any evidence to show that there was money
2 specifically intended in the budget bill for this particular
3 mandate other than the $6. They've not provided any evidence
4 that the teachers' time is paid for there. And, with respect
5 to our exhibit, that's something that we did at the beginning
6 of this program before we knew what the costs are. We think
7 our costs are significantly more than that. Even if you were
8 to discount the teachers' time in administering the tests,
9 you would still have costs in excess of the claim.
10 Again, that's a factual matter that I don't believe
11 the Department of Finance is qualified to testify on this
12 matter. We have been collecting cost data over the last
13 three years. I don't know that they have.
14 And, finally, I'd like to turn over the floor to
15 Mr. Knott to address the revenue issue.
16 CHAIRPERSON PORINI: Mr. Knott.
17 MR. KNOTT: The Department of Finance cited the
18 funding that school districts receive which we call our
19 Revenue Limit Funding. So now we're paying for the
20 attendance of our students. Since the enactment of the STAR
21 law, that revenue limit has been adjusted for only three
22 items: a cost of living adjustment, which is tied to the
23 Department of Commerce price deflator, and that goes to all
24 school districts just to maintain for the cost of inflation,
25 not new activities but just inflation; we've been funded for
26 the growth in our student population, our ADA; and the third
27 item is beginning in 2000-2001, if school districts
28 participated in the beginning teachers' salary adjustment

1 last year, we are able to add to our revenue limit a dollar
2 amount if you participated in that program. Those have been
3 the only three adjustments that have occurred to school
4 districts' revenue limits.
5 I'd also like to point out that while school
6 districts are mandated to offer school for 180 days, our
7 funding is tied to our P2 ADA. Our P2 ADA from my district
8 cut off on March 23rd, this year. It cut off prior to the
9 administering of the tests. So the argument that we would
10 have lost funding if the students weren't in instruction is
11 really null and void, because our funding was tied to our ADA
12 generated up to our P2 point in time, and the test occurs
13 after that time. We are not penalized for absences after
14 that point in time.
15 CHAIRPERSON PORINI: All right. Ms. Oropeza.
16 MS. OROPEZA: It's not clear to me exactly what
17 evidence the claimants are expecting us to provide. It seems
18 to us that -- and it's also not clear to me why it's
19 necessary that the legislation -- the legislation has to
20 provide, from what I can tell here, additional revenue
21 sufficient to cover costs for the mandate.
22 If we provided money in the Budget Act, it covers
23 those activities, then, by virtue of that, we don't have to
24 provide additional funds if we're also covering the costs of
25 the district. And there are very -- in the regulations that
26 the Department of Education has adopted, there are very clear
27 outlines of what the districts are being reimbursed for, so
28 I'm not quite sure what it is that the claimants are

1 expecting us to provide, in terms of evidence, beyond what's
2 already out there.
3 And one last thing: Districts were provided 1.8
4 billion dollars in deficit reduction money as an additional
5 adjustment that could be used for any discretionary purpose.
6 And, as I understand it, it mostly went to teachers'
7 salaries.
8 MR. KNOTT: The deficit reduction that the
9 Department speaks to is paying us on their cost of living
10 adjustments for 1990 through 1995. It's just a grant that's
11 for revenue limits, but failed to appropriate funding for.
12 So it just means that we're going to be paid a hundred cents
13 on the dollar beginning in 2000 and 2000 and 1.
14 Throughout the decade of the 1990's, school
15 districts were paid anywhere from 89 cents to 93 cents on the
16 dollar of what they were entitled to under the state law. So
17 that was not new funding for new programs. It's simply
18 financed on cost-of-living adjustments that predate the
19 mandate.
20 CHAIRPERSON PORINI: All right. Questions from
21 members?
22 MR. BELTRAMI: Madam Chair, I'd like to ask staff:
23 Do you have a comment on this salary issue?
24 MR. SCRIBNER: The salary issue? Well, the original
25 point, going back a little bit, as far as the claimant
26 bringing up the cost accounting issues that teachers' time to
27 be accounted for, the staff does not disagree. However,
28 17514 is in direct conflict with that and is what the

1 Commission is governed by. 17514 defines costs mandated by
2 the state.
3 Costs mandated by the state means any increased
4 costs which a school district is required to incur "increased
5 costs"; the school day is not extended, the school year is
6 not extended. Teachers are doing something different. They
7 are doing the STAR Program as opposed to teaching math or
8 history or whatever. It's a different activity, in the same
9 amount of time, that has not resulted in increased cost, and
10 that was our position, and that is why the change was made
11 from the draft.
12 CHAIRPERSON PORINI: Mr. Cunningham?
13 MR. CUNNINGHAM: Yeah. We don't agree with that.
14 What has happened is that you have replaced a state chosen
15 activity or you've used a state activity to replace a
16 district activity, and that does have a cost. We may have to
17 extend other services or things that we normally would have
18 had the teachers do. We no longer have the opportunity to
19 have the teachers do the activities that we, as the local
20 government, would chose to have them do. We're now carrying
21 out a state program.
22 And it's just like if the state had carried out a
23 program itself and had not passed to us -- so all the
24 Department of Finance staff has to administer the tests. You
25 know, there is a cost associated with that because you're
26 replacing some other activity that you would otherwise have
27 done with a state activity.
28 Again, I'd like to turn it over to Mr. Knott for

1 just a moment.

2 CHAIRPERSON PORINI: Mr. Knott?

3 MR. KNOTT: I think there's been an acknowledgment
4 by the state, and especially the administration here, trying
5 to seek ways to increase the instructional time,
6 acknowledging that our students aren't receiving all the
7 instructional time. My district has embarked upon this year
8 major, major programs of after-school tutoring, reading
9 programs, enlarging our summer school program beyond the
10 levels funded by the state, trying to just address the fact
11 that within our existing instructional time we're not getting
12 the job done, and I think there's general recognition.

13 So that any time there's a state imposed mandate,
14 which takes time away from the instructional function, and
15 yet we want to hold our students and have them achieve at
16 very high standards, then we're forced to find ways to give
17 them back that instructional time. And you're seeing that
18 throughout the State of California, and this administration
19 has recognized that within the last two years and is taking
20 efforts to try to address that very issue.

21 In this particular case, the legislature imposed a
22 mandate which took away time from our students and we're
23 trying to make that time up, so there is an increased cost
24 going to the district.

25 And, as Mr. Cunningham indicated, the redirection of
26 effort is a legitimate cost chargeable to any program. Those
27 who mandate the change must be prepared to pay for the
28 change, and that's what the state has basically set up in the

1 mandated cost process, and the legislature acknowledges that.
2 They tell us to come to you.
3 We accomplished -- we carried out the mandates, but,
4 as you're very well aware, you're unable to act within the
5 first year we carry out the mandates, so, obviously,
6 districts are carrying out mandates without the benefit of
7 being increased funded, hence we come to the Commission,
8 ultimately to the legislature and the governor, for the
9 reinstatement of those dollars that we've lost during that
10 time that we've had to come forward to comply with the
11 mandate and then to get our hearing before you and the
12 legislature.
13 CHAIRPERSON PORINI: Questions from members?
14 Ms. Steinmeier?
15 MS. STEINMEIER: I have a lot of sympathy for this
16 issue; however, even though ~~cases --~~ excuse me, decisions
17 made by the Commission are not -- do not set precedent. We
18 have looked at this very issue several other times since I've
19 been on the Commission in the last three years, and we have
20 not been able to find a way, under our existing code
21 sections, to be able to give you this redirected time. I
22 wish there were a way to do it. I'd suspect you'd have to go
23 to other sources to get that, either the legislature or the
24 courts.
25 There have been no court rulings or legislation that
26 says that redirected costs are reimbursable. So, at this
27 point, although I'd like to make that change, I'm afraid I'm
28 going to have to go with the staff analysis, and then -- and

1 it has given you a lot of activities which are additional
2 costs that we can actually quantify and reimburse the school
3 districts for, so I am going to be supportive of the staff
4 analysis.
5 And, if it's appropriate, I'd like to move it.
6 CHAIRPERSON PORINI: All right. We have a motion.
7 MR. SHERWOOD: I would like to second the motion.
8 And I'd also like to say that I agree with
9 Ms. Steinmeier, since I've been on the board a few years
10 myself, and this issue is one that we've addressed before,
11 and it's not pleasant, but I think we're in the
12 position we're in and that we have to vote from where we are.
13 MR. CUNNINGHAM: We're just giving you another
14 opportunity to get it right.
15 CHAIRPERSON PORINI: Thank you, Mr. Cunningham.
16 All right. We have a motion and a second.
17 Mr. Beltrami?
18 MR. BELTRAMI: Mr. Cunningham, why don't you just go
19 out and hire people to do this?
20 MR. CUNNINGHAM: That may be the result.
21 MR. BELTRAMI: I'm sure that it's --
22 MR. CUNNINGHAM: We may need to just have staff
23 probably on those days.
24 MR. BELTRAMI: They keep just sending you things to
25 do and, you know, same amount of folks to do it. Something
26 has got to break at some point in time.
27 MR. KNOTT: One of the things we attempt to do was
28 to carry out the state direction of mandates in the most cost

1 efficient way that we possibly can but also recognize who is
2 the best person to do it. And, believe me, when you're
3 administering tests, probably the best person to administer
4 the test to the kids in the classroom is that child's teacher
5 who is familiar with that class population as opposed to
6 bringing in an outsider who may not know which children may
7 need a little more attention during the test process.
8 CHAIRPERSON PORINI: Just as a side note, I would
9 say that your suggestion that the Department of Finance might
10 administer the test, maybe we'll pursue that.
11 MR. KNOTT: When is staff available and how many?
12 Mark it on your calendar, March 15 to May 15.
13 CHAIRPERSON PORINI: We'll work that out.
14 Mr. Beltrami?
15 MR. BELTRAMI: How much time does the test take?
16 MR. CUNNINGHAM: I think Bob can address that better
17 than I.
18 MR. RAINES: About eight hours, right now, of actual
19 testing time, and that doesn't include reading the directions
20 and so forth. With the proposed addition of two more content
21 standards test in history/social science and science this
22 next year, it's going to be something over ten hours.
23 CHAIRPERSON PORINI: All right. We have a motion
24 and a second before us to adopt staff's recommendation.
25 Mr. Lazar?
26 MR. LAZAR: No.
27 CHAIRPERSON PORINI: All right. Any further
28 discussion?

1 (No Response.)

2 CHAIRPERSON PORINI: Seeing none, may we have role

3 call.

4 MS. HIGASHI: Mr. Lazar?

5 MR. LAZAR: Aye.

6 MS. HIGASHI: Mr. Sherwood?

7 MR. SHERWOOD: Aye.

8 MS. HIGASHI: Ms. Steinmeier?

9 MS. STEINMEIER: Aye.

10 MS. HIGASHI: Ms. Aronberg?

11 MR. ARONBERG: Aye.

12 MS. HIGASHI: Mr. Beltrami?

13 MR. BELTRAMI: Very reluctantly, aye.

14 MS. HIGASHI: Ms. Halsey?

15 MS. HALSEY: Aye.

16 MS. HIGASHI: Ms. Porini?

17 CHAIRPERSON PORINI: Aye.

18 MS. HIGASHI: Thank you.

19 MR. CUNNINGHAM: Thank you.

20 CHAIRPERSON PORINI: Thank you.

21 That takes us to Item 6.

22 MS. HIGASHI: This item will be presented by

23 Nancy Patton.

24 MS. PATTON: Good morning. "Existing law requires

25 the Commission to hear and decide claims by local agencies

26 and school districts that the State Controller incorrectly

27 reduced their reimbursement claims.

28 "The Commission's regulations allow the Commission

REPORTER'S CERTIFICATE

---oOo---

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)
)

I, STACEY L. HEFFERNAN, certify that I was the official court reporter for the proceedings named herein; and that as such reporter, I reported to the best of my ability, in shorthand writing, of those proceedings; that thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1 through 134, herein constitute a complete, true and correct record of the proceedings:

PRESIDING OFFICER: Annette Porini, Chairperson

JURISDICTION: Commission on State Mandates

CAUSE: Public Hearing held on July 27, 2000

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 3rd day of August, 2000.

STACEY L. HEFFERNAN, CSR, RPR
NO. 10750

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California

July 27, 2000

9:30 A.M. - PUBLIC SESSION

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Heather Halsey
Representative of the Director of the Office of Planning and Research
Member Cindi Aronberg
Representative of the State Controller
Member Albert Beltrami
Public Member
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:37 a.m.

REPORT FROM CLOSED EXECUTIVE SESSION (JUNE 29, 2000 HEARING)

Chairperson Porini reported that, following open session at the June 29, 2000 hearing, the Commission met in closed executive session pursuant to Government Code section 11126 to confer with and receive advice from legal counsel for consideration and action as necessary and appropriate upon pending litigation noticed on the public notice and agenda and Government Code sections 11126, subdivision (a), and 17527 to confer upon personnel matters listed on the published notice and agenda.

APPROVAL OF MINUTES

Item 1 June 29, 2000

This item was postponed.

PROPOSED CONSENT CALENDAR

TEST CLAIMS

Item 5 *Immunization Records - Hepatitis B* - 98-TC-05
Los Angeles County Office of Education
Education Code Section 48216
Health & Safety Code Sections 120325, 120335, 120340, and 120375
Statutes of 1978, Chapter 325; Statutes of 1979, Chapter 435;
Statutes of 1982, Chapter 472; Statutes of 1991, Chapter 984;
Statutes of 1992, Chapter 1300; Statutes of 1994, Chapter 1172;

Statutes of 1995, Chapters 291 and 415; Statutes of 1996, Chapter 1023
Statutes of 1997, Chapters 855 and 882
Title 17, California Code of Regulations Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075

PROPOSED STATEMENTS OF DECISION

Item 7 *Financial and Compliance Audits,* CSM No. 4498/4498A
Sweetwater Union High School District and San Diego County Office of Education, Co-Claimants
Education Code Sections 1040, 14501, 14502, 14503, 14504, 14505, 14506, 14507, 41020, 41020.2, 41202.3, and 41023
Statutes of 1995, Chapter 476, et al.

Item 8 *County Treasury Oversight Committees* - 96-365-03
County of San Bernardino, Claimant
Government Code Sections 27130 et seq.
Statutes of 1995, Chapter 784 and Statutes of 1996, Chapter 156

Item 9 *Gann Limit Calculation*, 97-TC-18
Alameda County Office of Education, Claimant
Education Code Sections 1629 and 42132
Government Code Sections 7901, 7902, 7902.1, 7906-7908, and 7910
Statutes of 1996, Chapter 1023, et al
Title 5, California Code of Regulations, Section 58303
California Department of Education Management Advisories: 87-04, 88-04, 89-06, 89-08, and 90-06

ADOPTION OF PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Item 11 *Not Guilty by Reason of Insanity* - 98-PGA-10 (CSM 2753)
County of San Bernardino, Requester
Penal Code Sections 1026 and 1026.5
Statutes of 1979, Chapter 1114
Statutes of 1982, Chapter 650

Upon motion by Member Steinmeier and second by Member Beltrami, the consent calendar, consisting of Items 5, 7, 8, 9, and 11, was adopted unanimously.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

Ms. Higashi swore in all witnesses for the Article 7 hearing en masse.

TEST CLAIMS

Item 2 *Property Tax Administration: Schools* - CSM-4473-a
County of San Bernardino, Claimant
Revenue and Taxation Code Section 97
Statutes of 1991, Chapter 333

Camille Shelton, Staff Counsel, introduced this item. She noted that the test claim statute eliminated the counties' authority to charge school districts for their share of the administrative

costs associated with counties' longstanding responsibility of assessing, collecting, and apportioning real property taxes for other local agencies and school districts. She explained that, although the test claim statute results in counties absorbing the schools' share of property tax administrative costs, counties are still performing the same property tax activities of assessing, collecting, and distributing property tax revenue that they have performed since before the enactment of the test claim statute. Therefore, staff recommended the Commission deny the test claim. Ms. Shelton noted a late filing from the claimant was received by staff the day before the hearing. The late filing was a letter dated March 28, 2000, of which staff had no record of previously receiving by either facsimile or mail.

Parties were represented as follows: Marcia Faulkner with the County of San Bernardino; Cedrick Zemitis with the Department of Finance; and, Allan Burdick with California State Association of Counties.

Ms. Faulkner argued that the point of the late filing was to support the claimant's position that the test claim legislation resulted in a shift of financial responsibility from the state to the counties, not from schools to counties. She clarified that the claimant does not allege that the property tax administration activities alone constitute the higher level of service. Rather, the claimant bases the test claim on those activities which, when coupled with the elimination of reimbursement to the county, allows reimbursement to fund a totally different activity of public education. Ms. Faulkner requested the Commission approve this test claim and find a new program is imposed on counties, that of public education, and that there was a shift of financial responsibility from the state to the counties.

Regarding the late filing, Ms. Shelton explained that the claimant was arguing that the statute has shifted the financial responsibility of funding public education from the state to the counties. She submitted that this test claim is not about funding public education, rather, it involves the administrative costs associated with assessing, collecting and distributing local property tax revenues which have been the sole responsibility of counties since Proposition 13. Citing *County of Los Angeles*, Ms. Shelton argued that the state has never operated the assessment and distribution of local property taxes—those have been responsibilities of the counties. She added that, even if the counties did receive money from the state, that was simply a reimbursement scheme and there had been no shift.

Member Beltrami asked if the counties' responsibilities actually went further back than Proposition 13. Ms. Shelton said she thought they did, but did not research the full history.

Mr. Zemitis concurred with staff's analysis.

Member Beltrami asked if Proposition 13 had limited local governments' flexibility. Mr. Zemitis replied that the voter-approved constitutional amendment set the property tax rate, which, in effect, did not allow locals to change their property tax rates. Member Beltrami asked if the fact that the state redirected property taxes from one local entity to another indicated that it was not just a local county operation. Mr. Zemitis replied that the administration of property taxes has always been local and that prior to, or just after Proposition 13 was passed, revenues decreased because the property tax rate decreased. He added that the state had surplus monies and chose to fund schools at a higher level and allow counties to retain extra property taxes. However, that had nothing to do with administration costs. In the early 1990s, that was shifted back, so schools now receive approximately 53

percent of each property tax dollar, and, prior to Proposition 13, they also received approximately 53 percent.

Member Steinmeier noted that the provision allowing for counties to collect administrative costs for ERAF[1] was a one-year event. She agreed with staff's analysis that it was an internal local shift and not from the state. She added that, if anyone was responsible, it was the people of California when they adopted Proposition 13, and the Commission cannot address enactments of the people. Member Steinmeier moved adoption of the staff analysis. Member Halsey seconded the motion.

Ms. Faulkner argued that the fact that counties only received reimbursement for one year has not historically played a part in the mandate determination process. Citing *Lucia Mar*, she submitted that the Commission must look at the law in effect immediately before the test claim legislation. Ms. Faulkner disagreed with the argument that the state does not administer property taxes. She noted that, since at least 1978, counties have had to follow all state direction and are audited by two state agencies.

Mr. Burdick concurred with Ms. Faulkner and added that, if it were not for the action of the Legislature, counties would never have incurred this increased cost. He submitted that, under *Lucia Mar*, there was a shift from the state to the county.

Ms. Shelton argued that the *Lucia Mar* case is not on point because, in this case, the state did not administer the program before the enactment of the test claim statute as was the case in *Lucia Mar*.

On a roll call vote, the motion passed unanimously.

Item 3 *Property Tax Administration: ERAF* - CSM 4473-b
County of San Bernardino, Claimant
Revenue and Taxation Code Section 97.5
Statutes of 1993, Chapter 66

Camille Shelton introduced this item. She noted that, as a result of the test claim statute, counties are no longer able to charge school districts an administrative fee for establishing and distributing the Educational Revenue Augmentation Funds (ERAF) to school districts. Staff recommended the Commission deny the claim since they had already adopted a prior final decision on the same statute. Under that decision, the Commission recognized that counties no longer have the authority to charge school districts the administrative fee for collecting and distributing ERAF funds. Thus, counties are currently eligible under existing Parameters and Guidelines for reimbursement of such costs.

Parties were represented as follows: Marcia Faulkner with the County of San Bernardino; Allan Burdick with the California State Association of Counties; and Cedrick Zemitis with the Department of Finance.

Ms. Faulkner argued that the prior test claim on the same statute (filed by Los Angeles) addressed additional activities that were added in 1992, but did not address the base administration costs alleged in this claim. Further, if staff was recommending a denial due to the fact that the claimant did not allege all of the statutes describing property tax administration activities, Ms. Faulkner asked for the chance to amend the claim.

[1] Educational Revenue Augmentation Funds

Pat Hart Jorgensen, Chief Legal Counsel to the Commission, noted that this matter was originally postponed to allow the claimant to amend the claim to allege the appropriate statutes. Ms. Shelton added that the statute that has been alleged is for reimbursement for the administrative fees that counties have lost from the districts' ERAF funds. However, that activity is already reimbursed under the existing Parameters and Guidelines. She said that if another cost was being alleged, it would have to stem from another statute.

Ms. Faulkner again requested the Commission not deny the claim on a procedural technicality. Ms. Shelton noted that, if the claimant was alleging additional activities, those could be included in the existing Parameters and Guidelines through a Parameters and Guidelines amendment.

At the request of Member Lazar, Ms. Shelton reviewed the chronology of this claim.

Ms. Jorgensen noted that the Commission's Regulations, in section 1183, subdivision (e), require that when a test claim is filed, all statutes must be identified and copies attached. She reiterated that the claimant was given time to include those statutes. Ms. Faulkner noted that the claimant thought they had satisfied that requirement.

Member Beltrami asked Ms. Faulkner if she thought this was an allied issue with the *Sonoma* case. She replied that the issues were parallel, but not exactly the same.

Mr. Burdick submitted that, when this claim was filed, the claimant had filed only on the chapter requiring something new because that was how the process had worked historically. Further, the Los Angeles test claim cited this statute, as well as many other statutes. However, since this claim alleged a different activity, it was filed separately rather than combined with the more technical and specific Los Angeles claim. Mr. Burdick was not clear whether the activities could be included as a Parameters and Guidelines amendment and asked for procedural clarification.

Ms. Steinmeier asked Ms. Shelton if her analysis would have been different in light of Ms. Faulkner's testimony today. Ms. Shelton replied that it would not have been different because nothing had been cited today other than the statute. She added that, if there were differences from the Los Angeles claim, the activities had not been described.

Ms. Jorgensen said it might be possible to amend the Parameters and Guidelines. Ms. Shelton clarified that activities which stem from or are consistent with the Commission's prior final decision or consistent with those statutes in that decision can be incorporated as a Parameters and Guidelines amendment. If the activities are completely different and relate to different statutes, the claimant would need to amend the test claim.

Discussion ensued regarding the proper action to take.

Mr. Zemitis concurred with staff's analysis.

Member Beltrami moved to continue the item for one month to allow the claimants to evaluate whether they should file an amendment to the Parameters and Guidelines. Member Steinmeier seconded the motion.

Member Halsey submitted that, since claims brought before the Commission are to be fully stated, the subject law or provision should be included in the claim and the Commission should only address what is alleged. Chairperson Porini noted that was also what Ms. Jorgensen had read from the Commission's regulations.

Ms. Shelton commented that, if the Commission took action on this claim today, it would not prevent the claimant from filing another test claim. If the Commission found a reimbursable state mandate, the reimbursement period would go back to the prior fiscal year. The claimant could also file a Parameters and Guidelines amendment.

Member Sherwood asked how that would impact the claimants financially, if a mandate were found. Ms. Shelton explained that, since no activities were alleged, there has been no analysis and therefore a decision on that could not be made. It would impact the claimant's ability to either withdraw the claim or amend it, but would not make a difference for the reimbursement period.

Ms. Faulkner noted that the test claim was filed in 1994. She asked what the reimbursement period for a Parameters and Guidelines amendment would be. Mr. Burdick replied that it would be 1999-00. Ms. Shelton clarified that, if a new test claim or a test claim amendment were filed, the reimbursement period for any new sections would also go back only one fiscal year. She added that, at the time this claim was filed, the Government Code did not base the reimbursement period on the original filing date for amendments.

Chairperson Porini summarized the Commission's options. Member Lazar asked if it would be to the claimant's detriment if the hearing were continued. The Chair said that it would since the Commission was having the hearing today.

Member Halsey made a substitute motion to adopt staff's recommendation.[2] Chairperson Porini seconded the motion. Member Steinmeier noted that, if the Commission were going to make a mistake, she would rather err on the side of the claimant and allow them to explain their position once more. She wanted to give the claimant one month and opposed the substitute motion.

The Chair noted that the motion before the Commission was whether or not to approve the substitute motion—a motion to deny the test claim. The motion carried 4-3, with Members Aronberg, Halsey, Sherwood, and Porini voting "Aye," and Members Beltrami, Lazar, and Steinmeier voting "No."

The Commission then voted on the motion to adopt the staff recommendation, which was to deny the test claim. The motion carried 4-3, with Members Halsey, Sherwood, Aronberg, and Porini voting "Aye," and Members Beltrami, Lazar, and Steinmeier voting "No."

Item 4 *Standardized Testing and Reporting Test Claim* - 97-TC-23
San Diego Unified School District, Claimant
Education Code Sections 60607 (a), 60609, 60615, 60630, 60640, 60641, 60643
Statutes of 1997, Chapter 828, et al.
Title 5, California Code of Regulations, Sections 850-874

David Scribner, Staff Counsel, presented this item. He noted that the test claim legislation and regulations established a program related to achievement testing that school districts must administer to pupils in the state the Standardized Testing and Reporting Program (STAR Program). Staff found that the test claim legislation imposed costs mandated by the state upon

[2] See page 5 for Member Beltrami's motion to continue the item for one month to allow the claimants to evaluate whether they should file an amendment to the Parameters and Guidelines.

school districts and concluded that funds received by school districts for the administration of the STAR Program pursuant to the State Board of Education's reimbursement rate should be offset against claims filed for this test claim.

Parties were represented as follows: Jim Cunningham, Richard Knott, and Robert Raines with the San Diego Unified School District; and, Jeannie Oropeza and Peter Zervinka with the Department of Finance.

Mr. Cunningham recommended adoption of staff's recommendation with two substantive changes. He requested deletion of the two sentences on page 12 that both read, "Costs associated with teacher time to administer the tests are not reimbursable." (Bullets one and four.) He argued that section 6 of Article XIII B of the California Constitution is intended to prevent the state from forcing a program on school districts without paying the cost. Mr. Cunningham submitted that the state could have used state employees to administer the tests rather than school district employees and if they had done so, the state would have incurred costs. He argued that, just because the state chose to use school district employees to carry out its tests, there was no valid reason that it should avoid reimbursement for those costs.

Mr. Knott argued that by the state's own directions, in their manuals, time spent by teachers in performing this activity are allowable costs for that particular activity. He cited to the State Administrative Manual, section 6610, published by the Department of Finance, wherein costs are defined to be the "redirection of existing staff and/or resources to an activity" and that "direct costs do include personnel needed to perform a line function or activity as prescribed." He cited sections 9200 through 9240 and section 8752.1 in further support of his argument. Mr. Knott submitted that the section 702 of the State Accounting Manual, published by the California Department of Education, described direct costs as "Those that are charged to the benefited program." It reads, "An example of costs easily identified with a particular program are teachers' salaries." Mr. Knott also submitted that in Circulars A-21 and A-87 by the Office of Management and Budget, direct labor costs are defined to be "Those costs that are identified with a particular activity including compensation of the employees for the time devoted to the activity."

Mr. Raines submitted that the extensive and detailed requirements related to administration, reporting, and processing and newly imposed penalties for incomplete or incorrect demographic reporting have contributed greatly to the complexity of the STAR Program. He explained the coordination, administration, and investigation activities performed by his district.

Ms. Oropeza argued that, since teachers are administering the tests during the regular school day, the costs of teachers' salaries are not reimbursable. She disagreed with staff that the legislation did not provide enough funding for the program and instead argued that, once the cost of administering the program is removed, the state provided more than sufficient funds in the Budget Act to cover the costs.

Mr. Cunningham argued that the statutes addressing offsets require the Department of Finance to prove that the statute included additional revenue, that the additional revenue was specifically intended to fund the costs of the mandate, and that the additional revenue was sufficient. He claimed that the Department did not prove any of those three criteria. He added that, even if teachers' time were discounted, districts would still have excess costs.

Mr. Knott explained that, since enactment of the STAR Program, the Revenue Limit Funding for districts has been adjusted for only three items: a cost of living adjustment; growth in student population (ADA); and participation in the teachers' salary adjustment beginning in 2000-01. He also submitted that the argument that districts would lose funding if students were not "in instruction" was invalid because the district's funding is tied to ADA generated up to its "P2 point in time" and that the test occurs after that time.

Ms. Oropeza was not sure what evidence the claimant was asking the DOF to provide. She submitted that the legislation did not have to provide sufficient additional revenue to cover costs for the mandate because the money was provided in the Budget Act. Ms. Oropeza noted that districts received $1.8 billion in deficit reduction money as an additional adjustment that could be used for discretionary purposes. Mr. Knott replied that that money was for cost of living adjustments for 1990 through 1995.

Mr. Scribner noted that Government Code section 17514 defines costs mandated by the state as increased costs that a school district is required to incur. He recognized that teachers were performing a different activity, but added that, since the school day or school year was not extended, districts do not incur increased costs.

Mr. Cunningham disagreed. He submitted that the state has used a state activity to replace a district activity and that has a cost. Mr. Knott explained that any time there is a state imposed mandate, which takes time away from the instructional function, and yet the district wants to keep its students achieving at high standards, it is forced to find ways to give them back that instructional time. He argued that the redirection of effort is a legitimate cost chargeable to any program.

Member Steinmeier said she had a lot of sympathy for this issue, however, historically the Commission has not found a way under existing code sections, court rulings, or legislation to allow reimbursement for redirected time. She suspected the districts would need to go to the Legislature or the courts. Member Steinmeier moved adoption of staff's analysis. Member Sherwood agreed with Member Steinmeier's statements and seconded the motion.

Member Beltrami asked why districts do not hire people to administer the tests. Mr. Cunningham said that might be the result. Member Beltrami recognized that the Legislature keeps mandating activities during the regular school day without additional help. Mr. Knott replied that his district attempts to carry out the STAR Program in the most cost efficient way, while recognizing that the classroom teacher is the best person to do it.

On a roll call vote, the motion carried unanimously.

INCORRECT REDUCTION CLAIMS

Item 6 *School Crimes Statistics and Validation Reporting*
Education Code Section 14044
Penal Code Sections 628, 628.1, 628.2, and 628.6
Statutes of 1984, Chapter 1607; Statutes of 1988, Chapter 78; Statutes of 1989, Chapter 1457
California Department of Education's "Standard School Crime Reporting Forms"

A. Grossmont Union High School District, Claimant-99-4371-I-02
B. Panama-Buena Vista Union School District, Claimant 99-4371-I-03

C. Carlsbad Unified School District, Claimant -99-4371-I-04
D. San Diego County Office of Education, Claimant -99-4371-I-05

Nancy Patton of the Commission staff introduced this item. She noted that staff's analysis addresses the Incorrect Reduction Claims (IRCs) for four claimants. Staff recommended the Commission find that the State Controller's Office (SCO) did not incorrectly reduce the claims and deny the claims based on the following:

- Case law and statute provide the SCO with the authority to audit claims for legality and correctness and to adjust the claims for reimbursement if they are excessive or unreasonable.
- Not all mandates require training. If training is needed to carry out a mandate, it should be addressed in the Parameters and Guidelines.
- The Commission does not have the authority to determine whether the SCO created a standard of general application without benefit of law or due process of rulemaking—that determination falls under the authority of the Office of Administrative Law.

Parties were represented as follows: Keith Petersen representing the four claimants; Jim Cunningham, Interested Party, with the San Diego Unified School District; Jeff Yee and Paige Vorhies with the State Controller's Office; and, Marcia Faulkner, Interested Party, with the County of San Bernardino.

Mr. Petersen argued that the State Department of Education's Guidelines regarding this mandate specifically directed districts to appoint a district training officer to attend state training and for that officer to train district staff. Nine years ago when these Parameters and Guidelines were adopted, training costs were typically not a stated activity. Mr. Petersen submitted that only four Parameters and Guidelines between 1979 and 1998 enumerated training, which usually pertained to introduction of new curriculum material and training teachers on how to implement it and not to general staff training.

Mr. Cunningham submitted that training is a part of every new mandate. He argued that just because districts began including training in Parameters and Guidelines in 1998 to eliminate confusion on the issue does not mean that it should not be reimbursed for Parameters and Guidelines adopted prior to 1998. Further, Mr. Cunningham agreed with Mr. Petersen that, in this case, the State Department of Education's Guidelines clearly require training.

Mr. Petersen contended that, should the Commission decide that training must be in the Parameters and Guidelines, they should not apply that policy *ex post facto*. While he agreed that the SCO has the power to audit claims, he submitted that 1) there is no statute saying that training costs are not reimbursable and 2) it is a factual question of whether or not an audit occurred. Mr. Petersen further alleged that staff's recommendation did not cover 22 statements of fact contained in a letter dated July 19, 2000.

Mr. Vorhies explained that the SCO performs a claim audit, which has a very narrow perspective. Auditors look at 1) the eligibility of costs claimed that are explicitly stated in the statute and Parameters and Guidelines; 2) whether the costs are reasonable or excessive, and 3) whether there is actual proof of the expenditure. He added that, as to the subject issue, the SCO concluded that it is a decision for the Commission to make.

Regarding the letter dated July 19, 2000, Ms. Patton explained that staff revised its analysis to note that the claimants had reiterated their original arguments. She maintained that the issue

before the Commission was whether the SCO incorrectly reduced the claims. Staff found that since the statutes, Parameters and Guidelines, and Claiming Instructions do not contain training, the SCO did not incorrectly reduce the claims.

Mr. Petersen clarified that staff revised its analysis in response to the June 27, 2000 letter and did not make changes in response to the July 19, 2000 letter. He submitted that the executive order adopted by the Commission for this test claim requires training.

Mr. Vorhies explained that, unfortunately, the SCO does not usually get involved in the mandate process until the Parameters and Guidelines phase. Member Sherwood asked if the additional information from Mr. Petersen changed Mr. Vorhies' position. Mr. Vorhies replied that he would have to look into that.

Member Sherwood asked if claimants were paid for training in the claims before 1998. Mr. Petersen replied that, if it was claimed, they were probably paid. Mr. Vorhies said if that was true, it was unintentionally. Mr. Petersen explained that it might have been identified as an implementation cost if training was not an activity. He noted that the education community has made three unsuccessful attempts to resolve this issue since 1990.

Member Beltrami could not think of a government budget that does not include training. From an audit perspective, he asked Mr. Vorhies if he thought training was an inherent aspect of new regulations, rules or requirements. Mr. Vorhies replied that that was for the Commission to determine. He added that, in the audit, the SCO asks "Is it in writing?" and "How can we pay it?"

Member Beltrami noted that the comments today suggest that training has been paid in the past and asked if it was identified as such. Mr. Vorhies responded that there has not been a payment policy in the past for training and that the SCO has always followed the claim audit procedure—if the eligible item is listed, they will pay it.

Member Steinmeier asked what options the claimants had if they could show that training flowed from the statute and whether the Parameters and Guidelines could be amended. Ms. Jorgensen replied that they could be. Mr. Petersen explained that the option of amending the Parameters and Guidelines was not viable because the SCO adjustment was made after the period for which he could file an amendment to capture that year's costs.

Member Halsey asked if the claimant can submit additional documentation to the SCO when their claim is reduced or denied. Mr. Petersen said they could if requested. He submitted that the SCO did not request it in this case, which is why they said they did not conduct an audit.

Mr. Vorhies said that the Commission should also consider whose responsibility it is to prove the claim. He submitted that, if the SCO denies a claim and the claimant has proof, they should submit it. Mr. Vorhies clarified that the SCO makes every effort possible to appropriately reimburse money due to the claimants.

Mr. Petersen noted that, in his experience as a state auditor, he had to ask for documentation before making an adjustment. However, he understood that the SCO is reviewing thousands of claims and does not have time to read the actual test claim to see that training was included.

Chairperson Porini asked what Mr. Petersen did when the claims were denied. He replied that he filed the IRC. The Chair asked if he then gave the SCO the documentation showing that training was included. Mr. Petersen replied that he provided the documentation required by the incorrect reduction claim.

Ms. Patton noted that the executive order listed training as "suggested." Mr. Petersen submitted that the Commission had adopted the "suggestions" as a mandate. He added that the "suggestion" was between an implicit requirement and an express requirement and that the Commission has recognized implicit requirements as being reimbursable.

Ms. Faulkner commented that, in her experience, she knew of no way to implement state or federal regulations and statutes without conducting some kind of training.

Member Aronberg moved to adopt staff's recommendation. [There was no second.]

Member Steinmeier moved to find the SCO incorrectly reduced the claims and that training should be included. Member Beltrami seconded the motion.

Member Halsey asked if that meant the Commission was saying for all future Parameters and Guidelines that training must be included. The Chair said they were not. Member Beltrami added that it was for something that began in 1991 under a certain set of circumstances and understandings.

Member Sherwood asked whether the Commission would be changing the Parameters and Guidelines if it found an incorrect reduction. The Chair said it would not. Member Sherwood asked if that would give the SCO the ability to include training. Mr. Vorhies said that the SCO would still have no direction in the statute or Parameters and Guidelines to pay for training. Mr. Vorhies questioned the reason for Parameters and Guidelines and noted his concern for setting precedent for future claims. Member Sherwood replied that they were only talking about this claim. Mr. Vorhies said that there will be several more. Member Sherwood asked if the SCO could go back to the test claim decision. Mr. Vorhies agreed that the SCO legal staff would analyze the decision and make a determination.

Member Halsey asked if the SCO was disagreeing that there is a statute that requires training. Mr. Vorhies replied that everyone agrees the statute and Parameters and Guidelines do not mention training. He noted Mr. Petersen's argument that the training in the test claim was not carried over into the Parameters and Guidelines.

Ms. Jorgensen asked if the motion included reimbursement for all training costs or only those for which there is verification. Member Steinmeier replied that verification is part of the process, so the motion included only verified costs. She added that they were talking about these specific claims. Mr. Petersen agreed that IRCs are not precedent setting.

Mr. Vorhies asked if staff looked at the executive order in its analysis. Ms. Patton said she did and that staff and the Department of Finance both looked at training as suggested.

On a roll call vote, the motion passed 5-2, with Members Steinmeier, Beltrami, Halsey, Lazar, and Sherwood voting "Aye," and Members Aronberg and Porini voting "No."

Member Beltrami asked if it would be appropriate at this time to consider the sole issue of training. Ms. Higashi offered to convene a workshop with the claimants, representatives, and SCO.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 10 *Peace Officers Procedural Bill of Rights* – (CSM – 4499)
City of Sacramento, Claimant
Government Code Sections 3300 through 3310
Statutes of 1976, Chapter 465; Statutes of 1978, Chapters 775, 1173, 1174, and 1178; Statutes of 1979, Chapter 405; Statutes of 1980, Chapter 1367; Statutes of 1982, Chapter 994; Statutes of 1983, Chapter 964; Statutes of 1989, Chapter 1165; and Statutes of 1990, Chapter 675

Camille Shelton, Staff Counsel, introduced this item. She noted that staff made several modifications to the Claimant's Proposed Parameters and Guidelines to conform them to the Commission's Statement of Decision. She recommended the Commission adopt the Parameters and Guidelines, as modified by staff.

Parties were represented as follows: Edward Takach, Pam Stone, and Dee Contreras, for the City of Sacramento; Allan Burdick with CSAC SB 90 Service; Steve Huish with the Sacramento Police Officers' Association and PORAC; and, Jim Lombard with the Department of Finance.

Ms. Stone argued that this test claim was filed in 1994 and that, at that time, Statements of Decision did not specify every reimbursable activity. She submitted that the specific activities to be reimbursed are developed in the Parameters and Guidelines. Ms. Stone contended that the Commission's regulations do not require an activity to be specifically included in the Statement of Decision in order for it to be included in the Parameters and Guidelines.

Ms. Contreras argued that POBAR supersedes their collective bargaining agreement and has created litigation issues that would not exist but for POBAR. She explained that the issues surrounding litigation are broad and are fundamental to management's right to operate, assign, reassign, and move people. Ms. Contreras submitted that litigation costs were discussed somewhat at the last hearing and that it was inherent throughout this process that it was part of the mandate.

Ms. Stone added that section 3309.5 was included in the test claim and that the record reflects that litigation aspects were discussed at the time the initial test claim was heard and have discussed throughout.

Mr. Lombard concurred with staff's analysis.

Ms. Shelton explained that Article XIII B requires that in order for reimbursement to come from the state there must be a finding of a new program or higher level of service. Further, the implementing legislation in Government Code section 17514 requires a finding of costs mandated by the state. She maintained that the Commission never made a finding that section 3309.5 constitutes a reimbursable state mandated statute. Ms. Shelton agreed that the Commission's regulations allow it to include other activities in the Parameters and Guidelines that were not specifically stated in the Statement of Decision or statutes in question and that staff did that in these Parameters and Guidelines. However, those activities stemmed directly from the statutes addressed by the Commission. Ms. Shelton explained section 3309.5 has not

been analyzed by staff. If the Commission wanted to include it, she thought the only option was to find that legal defense costs are reasonably related to section 3304, subdivision (b).

Mr. Huish contested reimbursement to the City for any POBAR activities. He contended that POBAR bars the agency from violating the officers' rights and that the City should not be reimbursed for that activity. He supported staff's recommendation.

Mr. Burdick argued that, without POBAR, there would not be any of these lawsuits. Ms. Shelton noted that his argument was relevant to a test claim hearing in the determination of whether a statute imposes a new program or higher level of service.

Member Beltrami noted that there is a lawsuit possibility in almost every action. Mr. Burdick submitted that this case is different because the right is given in POBAR—the action is directly related to the program. Member Beltrami noted that it was not in the statute.

Citing the transcript, Ms. Contreras added that she discussed litigation at the test claim hearing. Ms. Shelton agreed that it was discussed, which was necessary to determine how much of this test claim was different than prior law through Skelly or through the due process clause of the United States Constitution. However, the Commission's regulations require the claimant to provide a description of how the statute imposes a new program or higher level of service. She noted that the claimant's briefs and narratives did not include section 3309.5 and that this section never had any analysis, briefing, or discussion until the Parameters and Guidelines.

Ms. Stone agreed that section 3309.5 has never been analyzed by staff, the claimant, or the Department of Finance. Mr. Burdick stated that this gets back to the issue of the role of the test claim and parameters and guidelines discussed earlier today. He submitted that, like regulations flush out what is in the statute, parameters and guidelines flush out what is in the decision.

Member Steinmeier agreed that certain litigation, with narrow limits, flows directly from POBAR. She maintained that the problem was that there was nothing in actual text where the section has been analyzed and so there would not be clear direction for the SCO to know which claims to pay or not pay.

Regarding Mr. Burdick's reference to regulations, Chairperson Porini noted that, if something is not specifically in the statute, the Office of Administrative Law throws out the regulations. She was uncomfortable adopting something that was not part of the test claim.

Member Beltrami asked why Parameters and Guidelines were necessary rather than just using the test claim. The Chair replied that the claim needs to include all of the specific code sections to be discussed. Ms. Stone argued that the statute was alleged, though the section was not analyzed or discussed. She agreed with Member Steinmeier that it was a very narrow issue.

Ms. Shelton noted that the Commission does not have unlimited discretion in the Parameters and Guidelines—it is bound by the Constitution and Government Code. She reiterated that activities must stem from a statute already determined by the Commission to impose a reimbursable state mandated program.

Ms. Shelton explained that, if the Commission wanted staff to draft language to include legal defense costs, the Commission must make a finding that legal defense costs are reasonably related to the administrative appeal under the commission's regulations.

Member Beltrami moved to find that legal defense costs, under section 3309.5, are reasonably related to the right to administrative appeal. Member Steinmeier seconded the motion.

On a roll call vote, the motion failed 2-5, with Members Beltrami and Steinmeier voting "Aye," and Members Halsey, Lazar, Sherwood, Aronberg and Porini voting "No."

Member Steinmeier moved staff's analysis. With a second by Member Halsey, the motion carried 6-1. Members Aronberg, Halsey, Lazar, Sherwood, Steinmeier, and Porini voted "Aye," and Member Beltrami voted "No."

PROPOSED REGULATORY ACTION - POSTPONED

Item 12 Staff Report on Public Comment and Proposed Modifications After Close of Public Comment Period: Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 adding section 1183.09 – Dismissals

This item was postponed.

EXECUTIVE DIRECTOR'S REPORT

Item 13 Workload, Governor's Budget, Local Claims Bill, Legislation, Next Agenda, etc.

Paula Higashi reported the following:

- The Local Claims Bill was signed by the Governor. Therefore, Open Meetings Act Incorrect Reduction Claims and new mandates have been funded.
- The August Commission hearing will be long and will have a designated lunch break.
- A rulemaking hearing will be held at 1:30 p.m. at the Commission's office.
- Commission staff is hosting an open house from 3:00 p.m. to 5:00 p.m. today.
- Staff will confer with the interested party representatives and the State Controller's Office to discuss the issue of omissions and prior Parameters and Guidelines. Staff will report back to the Commission on that issue.

CLOSED EXECUTIVE SESSION

Hearing no further business, Chairperson Porini recessed into closed executive session. She noted that the Commission would meet pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action as necessary and appropriate upon pending litigation listed on the published notice and agenda, and Government Code section 11126, subdivision (a), and 17527, to confer on personnel matters listed on the published notice and agenda.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini noted that the Commission had met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action as necessary and appropriate upon pending litigation listed in the published notice and agenda, and Government Code sections 11126, subdivision (a), and 17527 to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, Chairperson Porini adjourned the meeting at 1:24 p.m.

Paula Higashi

PAULA HIGASHI
Executive Director

f:/meetings/minutes/2000/072700

STATE OF CALIFORNIA GRAY DAVIS, Governor

COMMISSION ON STATE MANDATES
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SACRAMENTO, CA 95814
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August 4, 2000

TO: ALL INTERESTED PERSONS

FROM: Paula Higashi, Executive Director

RE: New Filings and Agenda

The Commission on State Mandates will hold its regular monthly meeting and hearing at 9:30 a.m. on **August 24, 2000** in the State Capitol, Room 126. The list of new filings and agenda are enclosed. The Commission will take a lunch break from 12 noon to 1:30 p.m.

Testimony at Commission Hearing. If you plan to address the Commission on an agenda item please notify the Commission Office by noon, two days before the hearing. When calling, identify the item and the entity you represent. For hearings on test claims and incorrect reduction claims, witnesses will be sworn in en masse at the commencement of the hearing and again when the Commission reconvenes after lunch. The Chairperson reserves the right to impose time limits on presentations as may be necessary to ensure that the agenda is completed.

Agenda Materials. All back-up material and supporting documentation for public meetings are available for public inspection at the Commission Office, 980 Ninth Street, Suite 300, Sacramento, California 95814; (916) 323-3562. In addition, a complete copy of the above-described materials will be available for public inspection at the meeting.

Web Site. Agenda items are available on the Commission's Web Site (http://www.csm.ca.gov/). After reaching the site's home page, click on the words "Current Hearing" on the left side of the page for the hearing agenda. Generally, the short agenda will be uploaded two weeks prior to the hearing. Items will be uploaded approximately one week before the hearing without exhibits and may be accessed from the agenda. If an item is postponed prior to the hearing, notice will be posted on the agenda. Following the hearing, Commission actions will be posted on the agenda, and revised items will be posted upon completion. Each month's agenda will remain posted until the following month is uploaded.

The approved minutes of previous commission meetings are also on the Web Site in Microsoft Word and PDF formats. To access the minutes, click on the words "Hearings/Minutes" on the left side of any page. The most recent minutes become available following approval by the Commission, generally after the next hearing. Also, minutes from the past three years are available on the Web Site.

Special Accommodations. If you need any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Enclosures

NEW FILINGS

July 7, 2000 through August 2, 2000

07/07/00	00-4298-I-07	Alameda County Office of Education	Removal Of Chemicals, Statutes of 1984, Chapter 1107, Education Code Section 49411, FY 1998/99, 1999/00
07/17/00	00-TC-02 (Amendment to CSM-4419)	City of Newport Beach	California Fire Incident Report System (CFIRS), Amendment adding Statutes of 1987, Chapter 345
08/02/00	00-TC-01 (Amendment to 99-TC-07	Sweetwater Union HSD	AIDS Prevention Instruction II Amendment adding Statutes of 1999, Chapter 234, Education Code Section 51553

COMMISSION ON STATE MANDATES

NOTICE AND AGENDA

August 24, 2000

9:30 A.M.

State Capitol, Room 126
Sacramento, California

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 June 29, 2000

Item 2 July 27, 2000

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. Items marked with an asterisk are included on the Proposed Consent Calendar. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 3-16.

A. TEST CLAIMS

~~Item 3~~ *Law Enforcement Racial and Cultural Diversity Training*
97-TC-06
County of Los Angeles, Claimant
Penal Code Section 13519.4
Statutes of 1992, Chapter 1267

~~Item 4~~ *Sexual Harassment Training in the Law Enforcement Workplace*
97-TC-07
County of Los Angeles, Claimant
Penal Code Section 13519.6
Statutes of 1993, Chapter 126

~~Item 5~~ *Child Abuse Treatment Services Authorization* - 98-TC-06
County of Los Angeles, Claimant
Penal Code Sections 273.1, 273a and 273d
Statutes of 1996, Chapter 1090

~~Item 6~~ *Physical Education Reports* - 98-TC-08
Bakersfield City School District and Sweetwater Union High School District, Co-Claimants
Education Code Section 51223.1
Statutes of 1997, Chapter 640

~~Item 7~~ *Behavioral Intervention Plans* - CSM-4464 (tentative)
Butte County Office of Education, San Diego Unified School District, and San Joaquin County Office of Education, Co-Claimants
Education Code Section 56523
Statutes of 1990, Chapter 959
Title 5, California Code of Regulations,
Sections 3001 and 3052

B. APPEAL OF EXECUTIVE DIRECTOR'S ACTION

Item 8 *Charter Schools II* - 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
Statutes of 1998, Chapter 34, et al.
San Diego Unified School District's Appeal of the Executive Director's Action Granting Department of Finance an Extension for Filing Comments

Lunch Break – 12:00 — 1:30 P.M.

C. INCORRECT REDUCTION CLAIM (**NO EARLIER THAN 1:30 P.M.**)

Item 9 *Graduation Requirements* - CSM 4435-I-01
San Diego Unified School District, Claimant
Education Code Section 51225.3
Statutes of 1983, Chapter 498

D. PROPOSED STATEMENTS OF DECISION – TEST CLAIMS

Item 10* *Property Tax Administration: Schools* - CSM-4473-a
County of San Bernardino, Claimant
Revenue and Taxation Code Section 97
Statutes of 1991, Chapter 333

Item 11* *Property Tax Administration: ERAF* – CSM-4473-b
County of San Bernardino, Claimant
Revenue and Taxation Code Section 97.5
Statutes of 1993, Chapter 66

Item 12* *Standardized Testing and Reporting Test Claim* - 97-TC-23
San Diego Unified School District, Claimant
Education Code Sections 60609, Subdivision (a), 60615, 60630, 60640, 60641, 60643
Statutes of 1997, Chapter 828, et al.
Title 5, California Code of Regulations, Sections 850-874

Item 13* *Immunization Records - Hepatitis B* - 98-TC-05
Los Angeles County Office of Education
Education Code Section 48216
Health & Safety Code Sections 120325, 120335, 120340, and 120375
Statutes of 1978, Chapter 325; Statutes of 1979, Chapter 435;
Statutes of 1982, Chapter 472; Statutes of 1991, Chapter 984;
Statutes of 1992, Chapter 1300; Statutes of 1994, Chapter 1172;
Statutes of 1995, Chapters 291 and 415; Statutes of 1996, Chapter 1023
Statutes of 1997, Chapters 855 and 882
Title 17, California Code of Regulations Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075

D. PROPOSED STATEMENTS OF DECISION – DISMISSAL OF TEST CLAIMS

Item 14* *Real Property Tax Administration* - CSM-4418
Culver City Redevelopment Agency, Claimant
Statutes of 1990, Chapter 466

Item 15* *Conservatorships for Misdemeanants* – CSM-4508
County of Placer and County of Fresno, Co-Claimants
Chapter 722, Statutes of 1992

E. PROPOSED STATEMENT OF DECISION – INCORRECT REDUCTION CLAIMS

Item 16* *School Crimes Statistics and Validation Reporting*
Education Code Section 14044
Penal Code Sections 628, 628.1, 628.2, and 628.6
Statutes of 1984, Chapter 1607; Statutes of 1988, Chapter 78;
Statutes of 1989, Chapter 1457
California Department of Education's "Standard School Crime Reporting Forms"

A. Grossmont Union High School District, Claimant-99-4371-I-02
B. Panama-Buena Vista Union School District, Claimant 99-4371-I-03
C. Carlsbad Unified School District, Claimant -99-4371-I-04
D. San Diego County Office of Education, Claimant -99-4371-I-05

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

E. PROPOSED REGULATORY ACTION

Item 17 Approval of Modifications After Close of Public Comment Period: Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 Adding Section 1183.09 – Dismissals

Item 18 Approval of Modifications After Close of Public Comment Period: Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Amending Sections 1181.1, 1183, 1183.05, 1183.12, 1185, 1185.01, 1185.02, 1185.2, 1188.4 of Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations (AB 1679)

VI. EXCUTIVE DIRECTOR'S REPORT (info)

Item 19 Workload, Legislation, Next Agenda, etc.

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino* v. *State of California, et al.*, Case Number SCV52190, in the Superior Court of the State of California, County of Los Angeles.
2. *County of Sonoma* v. *Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.
3. *San Diego Unified School District* v. *Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
4. *Long Beach Unified School District* v. *Commission on State Mandates,* Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.

5. *San Diego Unified School District and San Juan Unified School District* v. *Commission on State Mandates, et al,* Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.

6. *State of California, Department of Finance* v. *Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara,* Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.

7. *City of El Monte et al.* v. *Commission on State Mandates*, Case Number 3 Civil C025631, in the Appellate Court of California, Third Appellate District. (Sacramento County No. 95CS02704)

8. *City of San Diego* v. *Commission on State Mandates, et al.* Case Number GIC 751187, in the Superior Court of the State of California, County of San Diego.

9. *County of Los Angeles* v. *Commission on State Mandates, et al.* Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).).

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from Personnel Sub-Committee.

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

ITEM 12

PROPOSED STATEMENT OF DECISION
APPROVED TEST CLAIM

Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643
Statutes of 1997, Chapter 828

Title 5, California Code of Regulations, Sections 850-874

Standardized Testing and Reporting

EXECUTIVE SUMMARY

On July 27, 2000, the Commission heard and approved this test claim by a 7-0 vote. Therefore, the sole issue before the Commission is whether the Proposed Statement of Decision accurately reflects the vote of the Commission.[1]

BACKGROUND AND FINDINGS

The Commission noted that the test claim legislation and regulations established a program related to achievement testing that school districts must administer to pupils in the state – the Standardized Testing and Reporting (STAR) Program.

The Commission found that immediately before the enactment of the test claim legislation, state law did not require school districts to administer achievement tests to pupils. Thus, the Commission found that the test claim legislation and regulations impose a new program upon school districts for the administration of the STAR Program.

The Commission further found that while the test claim legislation *authorized* the Superintendent of Public Instruction to apportion funds for administration of the STAR Program, the test claim legislation did not itself include "additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate." Thus, the Commission concluded that Government Code section 17556, subdivision (e), is inapplicable to this test claim. Accordingly, the Commission found that the test claim legislation imposed costs mandated by the state upon school districts. The Commission further found that funds received by school districts for the administration of the STAR Program pursuant to the State Board of Education's reimbursement rate should be offset against total claim amounts for this test claim.

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[1] Title 2, California Code of Regulations, section 1188.1, subdivision (g).

CONCLUSION

Based on the foregoing, the Commission concludes that the test claim legislation and regulations for the STAR Program impose a reimbursable state-mandated program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

- Administration of the STAR Program tests to all pupils in grades 2 through 11, inclusive. (Ed. Code, §§ 60640, subds. (b), (c), 60641, subd. (a); Cal. Code Regs., tit. 5, §§ 851, 852, subd. (b), 853, and 855.) Costs associated with teacher time to administer the test are not reimbursable.
- Designation of a STAR Program district coordinator. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.)
- Designation of a STAR Program test site coordinator at each test site. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.)
- Administration of an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. Only reimbursable to the extent such tests are available. (Ed. Code, § 60640, subd. (g); Cal. Code Regs., tit. 5, § 851, subd. (a).) Costs associated with teacher time to administer the test are not reimbursable.
- Exemption from testing for pupils if the pupil's individualized education program has an exemption provision. (Ed. Code, § 60640, subds. (e), (j); Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Determination of the appropriate grade level test for each pupil in a special education program. (Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Provision of appropriate testing adaptation or accommodations to pupils in special education programs. (Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Inclusion of STAR Program test results in each pupil's record of accomplishment. (Ed. Code, §§ 60607, subd. (a), 60641, subd. (a).)
- Reporting of individual STAR Program test results in writing to each pupil's parent or guardian and to the pupil's school and teachers. (Ed. Code, § 60641, subds. (b) and (c); Cal. Code Regs., tit. 5, § 863.)
- Reporting of district-wide, school-level, and class-level results to the school district's governing board or county office of education. (Ed. Code, § 60641, subd. (d); Cal. Code Regs., tit. 5, § 864.)
- Submission of a report on the STAR Program to the Superintendent of Public Instruction. (Ed. Code, § 60640, subd. (j); Cal. Code Regs., tit. 5, § 862.)
- Contracting with a test publisher selected by the State Board of Education using an agreement approved by the State Board of Education. (Ed. Code, § 60643, subds.

(a)(2) and (c); Cal. Code Regs., tit. 5, §§ 860, 873.) This activity is limited to completing the agreement approved by the State Board of Education. Modification of the approved agreement by school districts to include any additional materials or services pursuant to Education Code section 60643, subdivision (e)(12) is not reimbursable.

- Payment of sales tax to the publisher. (Cal. Code Regs., tit. 5, § 856.)
- Completion of delivery schedule and order form. (Cal. Code Regs., tit. 5, § 874.)
- Provision to the test publisher of enrollment and test order data by grade level. (Cal. Code Regs., tit. 5, § 874.)
- Administration of the standard agreement pursuant to the State Department of Education's regulations. (Cal. Code Regs., tit. 5, §§ 856, 869, subd. (b), and 871.)
- Exemption of pupils from the STAR Program tests upon request of their parent or guardian. (Ed. Code, §§ 60615, 60640, subd. (j); Cal. Code Regs., tit. 5, § 852, subd. (a).)
- Submission to the State Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the STAR Program. (Ed. Code, § 60630, subd. (b); Cal. Code Regs., tit. 5, § 861.)
- Training and review of the STAR Program requirements as outlined in the test claim legislation and regulations by school district staff.
- Implementation of procedures relating the administration of the STAR Program.

STAFF RECOMMENDATION

Staff submits that the attached Proposed Statement of Decision accurately reflects the Commission's actions taken at the July 27, 2000 hearing regarding the *Standardized Testing and Reporting* Test Claim. Therefore, staff recommends that the Commission adopt the attached Proposed Statement of Decision.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	No. 97-TC-23
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, as amended by Statutes of 1997, Chapter 828; Title 5, California Code of Regulations, Sections 850-874; and Filed on March 23, 1998 By the San Diego Unified School District, Claimant.	*Standardized Testing and Reporting* PROPOSED 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 on August 24, 2000)*

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on July 27, 2000 during a regularly scheduled hearing. James Cunningham, Richard Knott, and Robert Raines appeared for San Diego Unified School District. Jeannie Oropeza and Pete Zervinka appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 7-0, approved this test claim.

BACKGROUND AND FINDINGS

Background on Statewide Achievement Tests

The test claim legislation and regulations established a program related to achievement testing that school districts must administer to pupils in the state – the Standardized Testing and Reporting (STAR) Program. The STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education. School districts are also required to engage in numerous activities related to test administration and reporting.

The state has required school districts to administer achievement tests to pupils for decades. For example, achievement tests were required for pupils in grades 6 and 12 under the California School Testing Act of 1969.[2] In 1972, the Legislature expressed its intent regarding pupil testing as follows:

> "It is the intent of the Legislature . . . to determine the effectiveness of school districts and schools in assisting pupils to master the fundamental educational skills towards which instruction is directed. The program of statewide testing shall provide the public, Legislature, and school districts evaluative information regarding the various levels of proficiency achieved by different groups of pupils of varying socioeconomic backgrounds, so that the Legislature and individual school districts may allocate educational resources in a manner to assure the maximum educational opportunities for all pupils. The program or statewide testing shall identify unusual success or failure and the factors which appear to be responsible, so that appropriate action may be taken at the district and state level to obtain the highest quality education for all public school pupils."[3]

In 1990, the Legislature expressed that the purpose of California's public school system is to "facilitate the development of each and every one of its pupils to become a self-motivated, competent, and lifelong learner."[4] The Legislature stated that: "the current pupil assessment system does not meet [these] purposes."[5] The Legislature further declared that:

> "There is no consistent system that pupils and parents can use to assess the performance of schools and school districts in providing effective programs and to measure the academic achievement of pupils. The five grade levels currently tested under the California school assessment program do not provide the most efficient assessment of overall pupil achievement."[6]

Statutes of 1990, Chapter 760 modified the state's achievement testing to require the testing of pupils in grades 4, 5, 8, and 10. Former Education Code section 60600.1, as added by Statutes of 1990, Chapter 760, provided that:

> "[Chapter 760] shall remain in effect only until January 1, 1995, and as of that date is repealed unless a later enacted statute, which is enacted *before* January 1, 1995, deletes or extends that date." (Emphasis added.)

The Legislature did not enact a statute before January 1, 1995 that either deleted or extended the date regarding the administration of achievement tests. However, Statutes of 1995, Chapter 975, enacted the Leroy Greene California Assessment of Academic Achievement Act,

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[2] *See* former Education Code section 12820 cited as Exhibit C in the claimant's test claim filing.

[3] *See* former Education Code section 12821 cited as Exhibit C in the claimant's test claim filing.

[4] Section 1 of Statutes of 1990, Chapter 760 cited as Exhibit E in the claimant's test claim filing.

[5] Section 1.3 of Statutes of 1990, Chapter 760 cited as Exhibit E in the claimant's test claim filing.

[6] *Ibid.*

which provided incentive funding for the provision of achievement testing to pupils in grades 2 through 10, inclusive, to each school district that certifies to the Superintendent of Public Instruction that they will administer such tests. The Commission notes that the achievement-testing program enacted under Chapter 975 was optional. Since the Legislature did not enact a statute by the requisite deadline set forth in Chapter 760, the Commission found that mandatory achievement testing was repealed by operation of law effective January 1, 1995.

Does the Test Claim Legislation Impose a New Program or Higher Level of Service?

The Commission found that the test claim legislation and regulations involve the administration of pupil achievement tests. Public education in California is a peculiarly governmental function administered by school districts as a service to the public. Moreover, the test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Therefore, the Commission found that administering pupil achievement tests constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.[7]

Prior Law Related to Achievement Tests

The Commission noted that the law in effect immediately before the enactment of the test claim legislation did not require school districts to administer achievement tests to pupils. Rather, prior law set up an incentive program for school districts that administer achievement tests to all pupils in grades 2 though 10.[8] Former Education Code section 60640 provided $5 per pupil tested to those districts that certified to the Superintendent of Public Instruction that it would administer achievement tests to all pupils in grades 2 through 10. Section 60640 did not require districts to administer achievement tests to those pupils.

The Test Claim Legislation: Current Law Related to the Standardized Testing and Reporting (STAR) Program

The Commission found that the test claim legislation and regulations established a program related to achievement testing that school districts must administer to pupils in the state – the Standardized Testing and Reporting (STAR) Program.[9]

The Commission found that the STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education.[10] The Commission found that

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[7] *Long Beach Unified School Dist.* v. *State of California* (1990) 225 Cal.App.3d 155, 172.

[8] *See* former Education Code section 60640 cited as Exhibit F in the claimant's test claim filing.

[9] The Commission noted that the original test claim filing included portions of the Education Code that related to the Academic Skills Assessment Program. However, the Department of Education has yet to promulgate regulations to implement the Program. Therefore, the claimant filed a motion to partially sever and withdraw those portions of this test claim that relate to the Academic Skills Assessment Program.

[10] The State Department of Education is administered through (1) the State Board of Education, which is the governing and policy determining body of the Department and (2) the Director of Education who is responsible for all executive and administrative functions of the Department and is the executive officer of the State Board of Education. *See* Education Code sections 33301, 33303. The State Superintendent of Public Instruction oversees

school districts must also: designate a STAR Program district coordinator and STAR Program test site coordinator at each test site; administer an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was enrolled in the district for less than 12 months before the time the last STAR Program test was administered; exempt pupils under certain circumstances; include STAR Program test results in the pupil's record or achievement; report STAR Program test results to the district's governing board or county board of education and to the pupil's parent or guardian; submit a report to the Superintendent of Public Instruction; contract with a test publisher to receive the tests; and submit whatever information the State Department of Education deems necessary to permit the State Superintendent of Public Instruction to prepare reports on the results of the STAR Program.[11]

The Commission also found that the state had required school districts to administer achievement tests to pupils since the 1960's, until Statutes of 1991, Chapter 760, repealed the mandatory achievement-testing requirement as of January 1, 1995. Statutes of 1995, Chapter 975, enacted the Leroy Greene California Assessment of Academic Achievement Act (Achievement Act), which provided incentive funding for the provision of achievement testing to pupils in grades 2 through 10, inclusive, to each school district that certifies to the Superintendent of Public Instruction that they will administer such tests. The Commission found that under the Achievement Act, the law in effect between January 1, 1996 and October 10, 1997, the operative date of the test claim legislation, school districts could *voluntarily* administer achievement tests to district pupils. However, the test claim legislation reinstated mandatory achievement testing under the STAR Program beginning on October 10, 1997. Thus, the Commission found that the test claim legislation and regulations have imposed a new program or higher level of service upon school districts since the law in effect prior to the enactment of the test claim legislation did not require the administration of achievement tests.

Based on the foregoing, the Commission found that the test claim legislation and regulations impose a new program upon school districts for the administration of the STAR Program.

Does the Test Claim Legislation Constitute Costs Mandated by the State?

Testing In General

The Commission found that in order for the test claim legislation and regulations to impose a reimbursable program under section 6, article XIII B of the California Constitution, the newly required activities must be state mandated.[12] The issue of whether the test claim legislation and regulations imposed costs mandated by the state centers on whether Government Code section 17556, subdivision (e), applies.

The Commission recognized that Government Code section 17556, subdivision (e), provides:

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the schools of this state and executes, under the direction of the State Board of Education, the policies that have been decided upon by the Board. The Superintendent is also ex-officio the director and executive director of the State Department of Education. *See* Education Code sections 33301-33303; 33111, 33112.

[11] *See* Education Code sections 60607, 60615, 60630 60640, 60641, 60643, and Title 5, California Code of Regulations, sections 851-853, 855-860, 865, 867-869, 871, 873.

[12] *Lucia Mar Unified School Dist.*, *supra* 44 Cal.3d 830, 835.

> "The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> " .....
>
> "(e) The statute . . . includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."

The Commission also noted that section 60640, subdivision (h), provides:

> "The Superintendent of Public Instruction shall apportion funds to enable school districts to meet the [STAR Program] requirements. . . . The State Board of Education shall establish the amount of funding to be apportioned. The amount to be apportioned shall be up to eight dollars ($8) per test administered to a pupil in grades 2 to 11, inclusive."

The claimant contended that section 17556, subdivision (e), is inapplicable to the present test claim because section 60640, subdivision (h), did not appropriate additional revenue in an amount sufficient to fund the mandate.[13] The claimant further contended that the State Board of Education's reimbursement rate of $6.65 per test, with an additional $0.15 per test for districts requesting preprinted answer sheets, is not enough to cover the cost of administering the STAR Program.[14]

The Commission found that the test claim legislation *authorized* the Superintendent of Public Instruction to apportion funds for administration of the STAR Program as established by the State Board of Education. However, the test claim legislation did not itself include "additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate." Thus, the Commission found that Government Code section 17556, subdivision (e), is inapplicable to this test claim. Accordingly, the Commission found that the test claim legislation imposed costs mandated by the state upon school districts.

The Commission noted that the Legislature has appropriated the following amounts for administration of the STAR Program in the state Budget Act: 1997-98 – $30,400,000; 1998-99 – $39,700,000; 1999-00 – $42,100,000. The Commission noted that funds received by school districts for the administration of the STAR Program pursuant to the State Board of Education's reimbursement rate should be offset against total claim amounts for this test claim.

Testing of Children with Disabilities

The Commission found that the test claim legislation requires that: (1) children with disabilities be exempted from testing for pupils if the pupil's individualized education program has an

---

[13] The Commission noted that the Department of Finance states: "we have concluded that the statute may have resulted in some costs mandated by the State."

[14] *See* Claimant's test claim filing, Exhibit H, Nick Bohl's declaration. The claimant estimates it would cost San Diego Unified School District $14.00 per test per fiscal year to administer the STAR Program.

exemption provision; (2) districts determine the appropriate grade level test for each pupil in a special education program; and (3) districts provide appropriate testing adaptation or accommodations to pupils in special education programs.

DOF contended that these activities stem from federal law and therefore, pursuant to Government Code section 17556, subdivision (c), are not reimbursable.[15] The Commission recognized that Government Code section 17556, subdivision (c), provides:

> "The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> " .....
>
> "(c) The statute . . . implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute . . . mandates costs which exceed the mandate in that federal law or regulation."

Specifically, DOF cited to subdivision (a)(16), section 1412 of the United States Code, which provides:

> "(16) Performance goals and indicators
>
> "The State—
>
> "(A) has established goals for the performance of children with disabilities in the State that—
>
> "(i) will promote the purposes of this chapter, as stated in section 1400(d) of this title; and
>
> "(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;
>
> "(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;
>
> "(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and
>
> "(D) based on its assessment of that progress, will revise its State improvement plan under part A of subchapter IV of this chapter as may be needed to improve its performance, if the State receives assistance under that part."

The Commission found that, based on the plain reading of subdivision (a) above, that federal law *does not* require testing exemptions; the determination of appropriate test levels; or the

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[15] Department of Finance's July 10, 2000 filing at page 2.

provision of testing accommodations for children with disabilities. Therefore, the Commission found that these activities are reimbursable and that funding received by school districts for administration of the STAR Program shall be offset against reimbursement claims.

CONCLUSION

Based on the foregoing, the Commission concluded that the test claim legislation and regulations for the STAR Program impose a reimbursable state-mandated program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

- Administration of the STAR Program tests to all pupils in grades 2 through 11, inclusive. (Ed. Code, §§ 60640, subds. (b), (c), 60641, subd. (a); Cal. Code Regs., tit. 5, §§ 851, 852, subd. (b), 853, and 855.) Costs associated with teacher time to administer the test are not reimbursable.
- Designation of a STAR Program district coordinator. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.)
- Designation of a STAR Program test site coordinator at each test site. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.)
- Administration of an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. Only reimbursable to the extent such tests are available. (Ed. Code, § 60640, subd. (g); Cal. Code Regs., tit. 5, § 851, subd. (a).) Costs associated with teacher time to administer the test are not reimbursable.
- Exemption from testing for pupils if the pupil's individualized education program has an exemption provision. (Ed. Code, § 60640, subds. (e), (j); Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Determination of the appropriate grade level test for each pupil in a special education program. (Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Provision of appropriate testing adaptation or accommodations to pupils in special education programs. (Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Inclusion of STAR Program test results in each pupil's record of accomplishment. (Ed. Code, §§ 60607, subd. (a), 60641, subd. (a).)
- Reporting of individual STAR Program test results in writing to each pupil's parent or guardian and to the pupil's school and teachers. (Ed. Code, § 60641, subds. (b) and (c); Cal. Code Regs., tit. 5, § 863.)
- Reporting of district-wide, school-level, and class-level results to the school district's governing board or county office of education. (Ed. Code, § 60641, subd. (d); Cal. Code Regs., tit. 5, § 864.)

- Submission of a report on the STAR Program to the Superintendent of Public Instruction. (Ed. Code, § 60640, subd. (j); Cal. Code Regs., tit. 5, § 862.)
- Contracting with a test publisher selected by the State Board of Education using an agreement approved by the State Board of Education. (Ed. Code, § 60643, subds. (a)(2) and (c); Cal. Code Regs., tit. 5, §§ 860, 873.) This activity is limited to completing the agreement approved by the State Board of Education. Modification of the approved agreement by school districts to include any additional materials or services pursuant to Education Code section 60643, subdivision (e)(12) is not reimbursable.
- Payment of sales tax to the publisher. (Cal. Code Regs., tit. 5, § 856.)
- Completion of delivery schedule and order form. (Cal. Code Regs., tit. 5, § 874.)
- Provision to the test publisher of enrollment and test order data by grade level. (Cal. Code Regs., tit. 5, § 874.)
- Administration of the standard agreement pursuant to the State Department of Education's regulations. (Cal. Code Regs., tit. 5, §§ 856, 869, subd. (b), and 871.)
- Exemption of pupils from the STAR Program tests upon request of their parent or guardian. (Ed. Code, §§ 60615, 60640, subd. (j); Cal. Code Regs., tit. 5, § 852, subd. (a).)
- Submission to the State Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the STAR Program. (Ed. Code, § 60630, subd. (b); Cal. Code Regs., tit. 5, § 861.)
- Training and review of the STAR Program requirements as outlined in the test claim legislation and regulations by school district staff.
- Implementation of procedures relating the administration of the STAR Program.

PUBLIC HEARING

COMMISSION ON STATE MANDATES

---oOo---

ORIGINAL

TIME: 9:30 a.m.
DATE: August 24, 2000
PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: STACEY L. HEFFERNAN CSR, RPR
No. 10750

A P P E A R A N C E S

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PUBLIC TESTIMONY

LEONARD KAYE, Certified Public Accountant,
Office of Auditor-Controller, Accounting Division
(Representing County of Los Angeles)

TOM LAING, Captain, County of Los Angeles Sheriff's Department, Career Development Bureau

RANDALL J. OLSON, Lieutenant, County of Los Angeles Sheriff's Department, Career Resources/Affirmative Action Unit

JAMES W. MILLER, Assistant Program Budget Manager, Department of Finance

AMBER D.PEARCE, Budget Analyst, Department of Finance

HAL SNOW, Representative from POST

JIM WRIGHT, Supervising Deputy Probation Officer, County of Los Angeles, Probation Department, Specialized Domestic Violence Monitoring Unit

CHERYL STEWART, Department of Finance

WAYNE STAPLEY, Representing Bakersfield City School District

LAWRENCE HENDEE, Coordinator/Mandated Costs, Sweetwater Union High School District

JEFFREY H. BELL, Principal Program Budget Analyst, Department of Finance

BARBARA TAYLOR, Department of Finance

JAMES A. CUNNINGHAM, Legislative Mandate Specialist
San Diego City Schools, Education Center

CAROL A. BERG, Ph.D., Executive Vice President
School Services of California, Inc.

FRANK TERSTEGGE, Director of Special Education, Paradise Unified School District

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A P P E A R A N C E S

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GAIL CAFFERATA, Behavior Consultant, Butte County Office of Education, SELPA

DANIEL G. STONE, Deputy Attorney General, State of California, Department of Justice, Office of the Attorney General

NONA MARTINEZ, Department of Finance

KEITH PETERSEN, MPA, JD, President, SixTen and Associates, Mandate Reimbursement Services
(Interested Party on Item 9)

SEAN SILVA, State Controller's Office

JEFF YEE, Section Manager, Local Reimbursements, Division of Accounting and Reporting, Representative for Kathleen Connell, State Controller

PETE CERVINKA, Department of Finance

ALLAN BURDICK, CSAC, League of Cities' Advisory on State Mandates

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	D. PROPOSED STATEMENTS OF DECISION, DISMISSAL OF TEST CLAIMS	
	Item 14: Real Property Tax Administration, (CSM-4418)	***

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1 CHAIRPERSON PORINI: Motion carries.

2 That takes us to our consent calendar.

3 MS. HIGASHI: Our proposed consent calendar. This

4 item includes all the proposed statements decision, Item 10,

5 Item 11, Item 12, Item 13, Item 14, Item 15, and Item 16, and

6 there's one correction to be made on Item 16, and that's just

7 to add Marcia Faulkner, County of San Bernardino, as a

8 witness. Her name was inadvertently left off. And we have

9 received no indications of opposition to this calendar.

10 CHAIRPERSON PORINI: All right. Does anyone wish to

11 remove anything from the consent calendar?

12 MS. STEINMEIER: I move approval of the consent

13 calendar.

14 MR. SHERWOOD: Second.

15 CHAIRPERSON PORINI: We have a motion and a second.

16 All those in favor indicate with "aye."

17 (Commissioners answered "aye" unanimously.)

18 CHAIRPERSON PORINI: Opposed?

19 (No response.)

20 CHAIRPERSON PORINI: Consent calendar carries.

21 MS. HIGASHI: All right. This brings us to our

22 first test claim, but, before we do our first test claim, I'd

23 like to continue our practice of having all of the potential

24 witnesses for all of the hearing items this morning to please

25 stand.

REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)
)

I, STACEY L. HEFFERNAN, certify that I was the official court reporter for the proceedings named herein; and that as such reporter, I reported to the best of my ability, in shorthand writing, of those proceedings; that thereafter caused my shorthand writing to be reduced to typewriting, and the pages numbered 1 through 149, herein constitute a complete, true and correct record of the proceedings:

PRESIDING OFFICER: Annette Porini, Chairperson

JURISDICTION: Commission on State Mandates

CAUSE: August 24, 2000 agenda and related items

IN WITNESS WHEREOF, I have subscribed this certificate at Sacramento, California, on this 1st day of September, 2000.

STACEY L. HEFFERNAN, CSR, RPR
NO. 10750

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California

August 24, 2000

9:30 A.M. - PUBLIC SESSION

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Heather Halsey
Representative of the Director of the Office of Planning and Research
Member Cindi Aronberg
Representative of the State Controller
Member Albert Beltrami
Public Member
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:30 a.m. All members were present.

APPROVAL OF MINUTES

Item 1 June 29, 2000

With a motion by Member Beltrami and second by Member Steinmeier, the minutes for the June 29, 2000 Commission hearing were adopted unanimously.

Item 2 July 27, 2000

With a motion by Member Steinmeier and second by Member Beltrami, the minutes for the July 27, 2000 Commission hearing were adopted unanimously.

PROPOSED CONSENT CALENDAR

PROPOSED STATEMENTS OF DECISION – TEST CLAIMS

Item 10 *Property Tax Administration: Schools* - CSM-4473-a
County of San Bernardino, Claimant
Revenue and Taxation Code Section 97
Statutes of 1991, Chapter 333

Item 11 *Property Tax Administration: ERAF* – CSM-4473-b
County of San Bernardino, Claimant
Revenue and Taxation Code Section 97.5
Statutes of 1993, Chapter 66

Item 12 *Standardized Testing and Reporting Test Claim* - 97-TC-23
San Diego Unified School District, Claimant
Education Code Sections 60609, Subdivision (a), 60615, 60630, 60640, 60641, 60643
Statutes of 1997, Chapter 828, et al.
Title 5, California Code of Regulations, Sections 850-874

Item 13 *Immunization Records - Hepatitis B* - 98-TC-05
Los Angeles County Office of Education
Education Code Section 48216
Health & Safety Code Sections 120325, 120335, 120340, and 120375
Statutes of 1978, Chapter 325; Statutes of 1979, Chapter 435;
Statutes of 1982, Chapter 472; Statutes of 1991, Chapter 984;
Statutes of 1992, Chapter 1300; Statutes of 1994, Chapter 1172;
Statutes of 1995, Chapters 291 and 415; Statutes of 1996, Chapter 1023
Statutes of 1997, Chapters 855 and 882
Title 17, California Code of Regulations Sections 6020, 6035, 6040, 6055, 6065, 6070, and 6075

PROPOSED STATEMENTS OF DECISION – DISMISSAL OF TEST CLAIMS

Item 14 *Real Property Tax Administration* - CSM-4418
Culver City Redevelopment Agency, Claimant
Statutes of 1990, Chapter 466

Item 15 *Conservatorships for Misdemeanants* – CSM-4508
County of Placer and County of Fresno, Co-Claimants
Chapter 722, Statutes of 1992

PROPOSED STATEMENT OF DECISION – INCORRECT REDUCTION CLAIMS

Item 16 *School Crimes Statistics and Validation Reporting*
Education Code Section 14044
Penal Code Sections 628, 628.1, 628.2, and 628.6
Statutes of 1984, Chapter 1607; Statutes of 1988, Chapter 78;
Statutes of 1989, Chapter 1457
California Department of Education's "Standard School Crime Reporting Forms"

A. Grossmont Union High School District, Claimant-99-4371-I-02
B. Panama-Buena Vista Union School District, Claimant 99-4371-I-03
C. Carlsbad Unified School District, Claimant -99-4371-I-04
D. San Diego County Office of Education, Claimant -99-4371-I-05

Ms. Higashi made one correction to Item 16 to add Marcia Faulkner, with the County of San Bernardino, as a witness. With a motion by Member Steinmeier and second by Member Sherwood, the consent calendar, consisting of Items 10, 11, 12, 13, 14, 15, and 16 was adopted unanimously.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

Ms. Higashi swore in all witnesses for the Article 7 hearing en masse.

TEST CLAIMS

Item 3 *Law Enforcement Racial and Cultural Diversity Training*
97-TC-06
County of Los Angeles, Claimant
Penal Code Section 13519.4
Statutes of 1992, Chapter 1267

Camille Shelton, Staff Counsel, introduced this item. She noted that staff found the test claim statute is not subject to Article XIII B, section 6 of the California Constitution because the requirement to complete the basic training course on racial and cultural diversity is a mandate imposed only on the individual who has peace officer status; the statute does not impose any activities on the local agency.

Parties were represented as follows: Leonard Kaye, Tom Laing, and Randy Olson, with the County of Los Angeles; Jim Miller and Amber Pearce with the Department of Finance; and Hal Snow with Peace Officer Standards and Training (POST).

Mr. Kaye submitted that the requirement to complete training is imposed on the recruit, but that he filed the test claim on the mandate to provide training.

Mr. Laing and Mr. Olson with the Los Angeles County Sheriff's Department described the diversity program being offered by their department.

Ms. Pearce concurred with the staff analysis.

Member Steinmeier asked Mr. Snow who was fundamentally responsible for providing diversity training. He replied that, in the case of law enforcement, all of the requirements that have come down from the legislature over the years have been provided by the employing agencies or local community colleges. He added that officers are sent on duty to attend the training and do not complete it at their own expense or volition.

Member Beltrami asked Mr. Snow if POST considers the two-hour tape it developed for diversity training adequate for this type of training. Mr. Snow replied that POST does consider it adequate, however, they leave it to the officer and the local agency to decide to supplement the tape with other forms of instruction. Member Beltrami noted that LA County's training is 24 hours.

Mr. Laing explained that the training for in-service officers includes 12 hours of culture specifics and four hours of sexual harassment training. The training for recruits includes 20 hours of cultural awareness training and four hours of sexual harassment training. Due to

LA County demographics, they thought this specialization beyond the POST instruction was necessary. Mr. Laing added that their expanded training was approved by POST.

Member Beltrami asked if all recruits go through the training program, or if some are hired already certified. Mr. Laing replied that, with the exception of a merger with another agency, all new hires are required to attend their training facility.

Member Steinmeier asked Ms. Shelton to comment on the conflict of practice versus law. Ms. Shelton noted her confusion with the claimant's argument—the original claim asked for reimbursement for peace officer time to complete training, but today it appeared the claimant was asking for trainer time.

Mr. Kaye submitted that trainer time should be reimbursed. He added that trainee time should be reimbursed unless the person was enrolled in the community college program and was not on the payroll.

Chairperson Porini asked if, given the change of direction, the members thought they should ask for an expanded analysis. Ms. Shelton said she would probably request additional briefings from the parties. Members Sherwood and Steinmeier agreed that they were not prepared to move ahead today in light of the testimony.

Ms. Porini noted consensus among the members to continue the item and have staff look at the issues raised by Mr. Kaye and to review additional filings.

Item 4 *Sexual Harassment Training in the Law Enforcement Workplace*
97-TC-07
County of Los Angeles, Claimant
Penal Code Section 13519.6
Statutes of 1993, Chapter 126

Ms. Shelton introduced this item. She noted that the claim, which addresses sexual harassment training, includes the following three parts:

- Part 1 addresses subdivision (a), which requires POST to develop complaint guidelines for officers who are the victims of sexual harassment in the workplace. Staff found that the guidelines constitute an executive order and impose a reimbursable state mandated program by requiring local agencies to develop a sexual harassment procedure.
- Part 2 addresses subdivision (b), which requires the basic training for peace officers to include instruction on sexual harassment. Staff's analysis was the same as in Item 3 above. Staff recommended the Commission deny the claim with respect to subdivision (b).
- Part 3 addresses subdivision (c), which requires veteran peace officers to receive supplemental sexual harassment training by January 1, 1997. Staff found that subdivision (c) is subject to Article XIII B, section 6 and that it constitutes a new program. Staff provided two options to determine if subdivision (c) imposes costs mandated by the state, and recommended the Commission choose option 2, that subdivision (c) imposes costs mandated by the state for the salaries, benefits, and incidental expenses for each veteran officer to receive a one-time, two-hour course on sexual harassment and the costs of materials and trainer time for the course.

Parties were represented as follows: Leonard Kaye, Tom Laing, and Randy Olsen with the County of Los Angeles; Jim Miller and Amber Pearce with the Department of Finance; Hal Snow with Peace Officer Standards and Training (POST); and Allan Burdick with the California State Association of Counties.

Mr. Kaye disagreed with staff's analysis regarding subdivision (b) and argued that the Legislature imposed a mandate on local agencies and community colleges to provide sexual harassment training. Mr. Kaye agreed with staff's analysis regarding subdivisions (a) and (c). He added that he did not necessarily agree the training should be limited to one two-hour session, but was willing to consider that issue during the Parameters and Guidelines phase.

Mr. Laing and Mr. Olsen described the sexual harassment program in the Los Angeles County Sheriff's Department.

Mr. Miller argued that the statutory requirement affects the content of the training but does not impose additional training. Furthermore, he argued that the statute imposes the requirement on the individual officers to acquire the training and not on the agencies to provide the training.

Mr. Snow explained that POST sets minimum training standards for California peace officers including a four-hour minimum basic course and two-hour supplementary training for officers who did not go through the basic course. Of the 6000 graduates of basic academies throughout the state, 2000 are not employed or affiliated students and 4000 are employed by law enforcement agencies. Member Beltrami asked who paid for non-employed and employed students. Mr. Snow replied that the non-employed students pay themselves, but are supplemented by community college funding provided by the state and student fees.

Member Beltrami asked staff to explain the relation of this item to Item 3 (above). Ms. Shelton replied that this item has three parts—the issue and staff recommendation to deny the second part is identical to Item 3. However, staff recommended approval of parts one and three, regarding complaint guidelines and continuing education.

In response to the Chair's request, Mr. Miller clarified that the DOF did not agree that there was a mandate regarding basic training, but no longer took issue with staff's recommendation regarding the guidelines.

Member Steinmeier asked Mr. Kaye to cite a state law requiring the local agency to be responsible for providing basic training. Mr. Kaye could not, but submitted that, when the Legislature required a new basic training course, it strongly implied that basic training academies (e.g., counties, cities, and community colleges) provide it.

Mr. Snow added that POST certifies 39 basic training academies statewide and that they are certified voluntarily.

Member Steinmeier moved staff's recommendation. Member Lazar seconded the motion. Member Beltrami asked Member Steinmeier if it was her position that the basic training mandate is on the individual. She replied that it was because the claimant was unable to cite any law that says it is the responsibility of the agency. She noted that school districts do not pay for teaching credentials.

Mr. Burdick argued that, since the Commission continued Item 3, they should put Part 2 of this claim over to the Parameters and Guidelines phase so they could decide the issues consistently. He was also concerned that today's discussion focused on a large county, which could have its own academy, and did not address the alternatives for, or impact on, smaller counties.

Ms. Shelton replied that whether the state mandates duties on local agencies is a threshold test claim issue and so it could not be put over for discussion during the Parameters and Guidelines. Further, based on Mr. Snow's testimony, she would not change her recommendation on subdivision (b) because there are no state statutes or regulations imposing requirements on local agencies or community colleges to provide basic training.

On a roll call vote, the motion carried 6-1, with Member Beltrami voting "No."

Item 5 *Child Abuse Treatment Services Authorization* - 98-TC-06
County of Los Angeles, Claimant
Penal Code Sections 273.1, 273a and 273d
Statutes of 1996, Chapter 1090

David Scribner introduced this item. He noted that staff recommended the Commission approve the test claim and find that the test claim legislation imposed reimbursable state mandated costs for the following activities:

- Development and implementation of child abuser's treatment counseling programs and vendor approval programs;
- Inspection and approval of child abuser's treatment counseling programs; and
- Receipt, care, and review of defendants' progress reports.

Parties were represented as follows: Leonard Kaye and Jim Wright, with the County of Los Angeles; and Jim Miller and Cheryl Stewart, with the Department of Finance.

Mr. Kaye and Mr. Wright concurred with staff's analysis.

Ms. Stewart agreed with staff's analysis regarding the first two activities, disagreed that receipt, care, and review of defendants' progress reports was a requirement in the law. She noted that, although treatment programs are required to submit the reports, there is not an additional requirement on probation officers to do anything with the report. Ms. Stewart submitted that, to the extent officers do anything with the report, it would be in conjunction with their responsibilities of enforcing the penalty for the crime, which is the probation requirement.

Mr. Scribner replied that the reports must go somewhere and someone must do something with them. He argued that the probation department would be responsible for the receipt, care, and review of these reports. Mr. Scribner added that, based on the language of the Penal Code, the county probation departments would use the reports as a tool to ensure compliance with the law.

Mr. Miller contended that use of the information is incidental—the primary goal is protecting the public. He submitted that monitoring progress through the treatment program is an integral

part of protecting the public and that it is part of the crimes and infractions responsibility imposed on the county.

Member Beltrami moved staff's recommendation. Member Sherwood seconded the motion. On a roll call vote, the motion carried 6-1, with Chairperson Porini voting "No."

Item 6 *Physical Education Reports* - 98-TC-08
Bakersfield City School District and Sweetwater Union High School District, Co-Claimants
Education Code Section 51223.1
Statutes of 1997, Chapter 640

Sean Avalos, Staff Counsel, introduced this item. He noted that staff concluded the test claim legislation imposes a reimbursable state mandated program for activities necessary for reporting on compliance with physical education requirements. Mr. Avalos added that, although staff recommended approval of the test claim, the actual reimbursement period should begin no earlier than the date that the school district receives documentation from the California Department of Education (CDE) that their district is specifically selected to participate in physical education compliance reporting.

Parties were represented as follows: Lawrence Hendee, with Sweetwater Union High School District; Wayne Stapley, with Bakersfield City School District; Jeff Bell and Barbara Taylor, with the Department of Finance; Carol Berg, with the Education Mandated Cost Network; and Jim Cunningham with San Diego Unified School District.

Mr. Hendee and Mr. Stapley agreed with staff's analysis.

Mr. Bell argued that the new legislation does not require districts to submit a report to the CDE. He further submitted that the existing Coordinated Compliance Review (CCR) for gender equity covers the same activities alleged in this claim. Mr. Bell contended that the subject legislation is actually more lenient regarding compliance than the existing process.

Mr. Avalos replied that, if the Superintendent of Public Instruction (SPI) took no action, there would be no reimbursement. However, if the SPI or the CDE adds an additional reporting requirement in the regulations, then the activity would be reimbursable at that time. Ms. Jorgensen added that this requirement is above and beyond the existing regulation, and while some basic information may be covered under current law, this is something additional that the SPI can request.

The Chair asked if there would be an offset since some basic information is covered. Ms. Jorgensen reiterated that this statute gives the SPI the authority to ask for additional information.

Member Steinmeier understood that it may seem logical to combine the two issues, but explained that if the SPI sees the issue as a discreet law, he/she may create it as a discreet report. She added that the audit would be added onto about ten percent of school districts after the CCR. Member Steinmeier submitted that, even if some basic information was covered, there is more staff time involved in generating yet another report. She asked staff if the Commission would need to suspend its finding at the Parameters and Guidelines phase until the SPI does something to create actual costs.

Ms. Jorgensen replied that mandates law does require a minimum of $200 of costs incurred for the mandate. However, without knowing what types of questions the SPI might ask, it would be difficult to assess. Ms. Jorgensen agreed that the Parameters and Guidelines might need to be put on hold.

Mr. Hendee noted that the 1999-00 training manual includes the new requirement for the test, although it does not include the details about what the SPI might ask.

Mr. Bell argued that the statute requires districts to report, but not to prepare a report.

Member Halsey asked staff if they would consider amending their recommendation to allow for offsets for reports or documents that are already prepared. Ms. Jorgensen replied that Parameters and Guidelines always contain a provision for offsetting savings.

Chairperson Porini asked if the districts prepare a variety of reports or if the CDE sends in a team of people to review documents. Mr. Hendee responded that the district receives notice the year before they are to be audited so they know what the team will be looking for and can prepare their records.

Member Beltrami asked if the team reviews the gender equity report as part of this review. Mr. Hendee replied that it does. Member Beltrami noted that, though the SPI can ask additional questions, additional questions are true of any audit. Ms. Jorgensen replied that it is true, however, in this case, there is a random selection of school districts.

Mr. Hendee was not sure how the CDE selects the districts. He argued that what a district has to do to defend itself relative to why a student is not receiving 200 minutes of instruction is to evaluate why they are not and report that to the SPI. Mr. Hendee explained that these are all the additional steps that a district must do to pass their compliance review.

Mr. Bell maintained that this activity was already covered under the existing CCR. Mr. Hendee disagreed and referred to the 1995-96 training manual, which did not contain the new physical education requirement. Dr. Berg clarified that Mr. Bell was referring to CDE documents that are current for 2000-01, which contain the current statute, after the law.

Member Sherwood recognized that two issues existed—one for 1995 through 2000, and the second for 2001 and on, for which there may be overlap creating an offset.

Mr. Cunningham submitted that Mr. Bell was referring to the 2000-01 training manual. Mr. Cunningham argued that the 2000-01 manual contained the new CCR language that was not in the prior training manuals.

Chairperson Porini asked if any district has completed the CCR. Mr. Cunningham did not know that answer. He added that, if a district has not gone through this process and therefore has no cost, it would not file a claim. He reasoned that language is not necessary in the Parameters and Guidelines.

Member Steinmeier moved the staff recommendation. Member Lazar seconded the motion.

Member Halsey asked if the gender equity and physical education requirements were in separate statutes. Dr. Berg replied that they were not separate statutes, but that the physical education requirement has been added into the training manual to meet the requirements of the

new statute. She added that this is a new effort that would require new reporting, research and preparation if the district were selected.

The motion to adopt the staff recommendation carried unanimously.

Ms. Higashi clarified that the statute requires the claimant to file proposed Parameters and Guidelines with the Commission upon adoption of a Statement of Decision and imposes a penalty if they are not filed. Once the Statement of Decision is issued, staff could schedule a prehearing to decide how the claimants and interested parties wish to proceed. Chairperson Porini suggested that staff contact the SPI to find out if the yearly CCR schedule is being implemented. Ms. Higashi agreed to do so.

Item 7 *Behavioral Intervention Plans* - CSM-4464
Butte County Office of Education, San Diego Unified School District, and San Joaquin County Office of Education, Co-Claimants
Education Code Section 56523
Statutes of 1990, Chapter 959
Title 5, California Code of Regulations,
Sections 3001 and 3052

David Scribner introduced this item. He explained that the item was first heard at the September 30, 1999 hearing, but the motion to deny the claim failed on a 3-3 vote. At the November 30, 1999 hearing, the Commission instructed staff to hold the test claim until appointment of a seventh member. That member was appointed in April 2000.

Mr. Scribner noted that staff did not change its analysis finding that, under state law, the use of behavioral intervention plans under certain circumstances is required, while under federal law, the use of such plans is not required. Staff therefore recommended the Commission approve the test claim.

Parties were represented as follows: Frank Terstegge, with Paradise School District (formerly with Butte County SELPA); Gail Cafferata, with the Butte County Office of Education SELPA; Jim Cunningham, with the San Diego Unified School District; and Nona Martinez and Dan Stone, Deputy Attorney General, with the Department of Finance.

Mr. Cunningham agreed with staff's analysis. He noted that, in a September 21, 1999 letter, he had requested a few minor corrections and that staff had agreed to those corrections at the September 30, 1999 hearing. Mr. Cunningham then reiterated his contention that, even after the 1997 amendment to federal law, there was no federal requirement for state or local agencies to develop and implement behavioral intervention plans.

Mr. Terstegge testified that the 1990 Department of Finance (DOF) analysis of the Hughes Bill indicated that current law did not require use of behavioral interventions and that such a requirement would impose a mandated cost. The DOF analysis of the corresponding regulations, under the adoption process in 1992, also indicated that the requirement would impose a mandated cost. Mr. Terstegge noted that 1994 and 1996 attempts to reauthorize the Individuals with Disabilities Education Act (IDEA) failed. He submitted that in 1995 the Federal Office of Special Education Programs stated that federal law does not necessarily require Individualized Education Plans (IEPs) to include behavioral intervention.

Mr. Terstegge added that, in 1997, the IDEA was reauthorized to include strategies such as behavioral interventions, which were then required to be "consider[ed], when appropriate."

Mr. Cunningham submitted that, even if the Commission found a requirement in the 1997 federal law, the Hughes Bill and regulations exceed what might be required under federal law.

Ms. Cafferata alleged that several components in the state regulations do not even appear in the federal regulations. Mr. Terstegge added that all of the requirements described by Ms. Cafferata had to be included in the SELPA local plan, which is reviewed every four years, so there was a burden at the SELPA level in bringing this in line with the local SELPA plan.

Citing federal case law, Mr. Stone maintained that behavioral interventions are required under federal law. He contended that, if the Commission looked at federal law as it is interpreted and applied by the court, it would find that behavioral intervention programs were included under federal law long before the 1997 federal amendments. Mr. Stone submitted that the 1997 amendments were clarifying amendments.

Mr. Stone alleged that the state statute and regulations were enacted as a result of a lawsuit against the Superintendent of Public Instruction regarding California's behavioral intervention methodology and that the parties agreed the statute and regulations would provide appropriate assurance under federal law. He further argued that the federal law is not all-inclusive and that it contemplates that states may add detail and shading. He claimed that behavioral intervention falls within "related services" not detailed in federal law and that the state was simply trying to comply with and implement the federal law with its statute and regulations.

Ms. Martinez argued that, by including behavioral interventions in IEPs, the state was ensuring handicapped pupils received a free appropriate public education as required by federal law.

Member Steinmeier submitted that, according to case law, the Commission must find a mandate if state law exceeds federal law. She asked if the state law includes special education students or all students. Ms. Cafferata explained that the law specifically requires an active IEP be in place and that it was designed for special education students.

Member Steinmeier asked about the minor changes Mr. Cunningham had mentioned earlier. Mr. Scribner indicated that staff still agreed with the modifications requested in the claimant's letter.

Mr. Stone noted that behavioral interventions are not used in every situation, only "if appropriate." He submitted that Mr. Terstegge testified in September 1999 that districts or SELPAs would not impose a behavioral intervention plan unless it was appropriate. Mr. Stone further argued that the fact that federal law allows for options, including behavioral intervention, does not mean the state law requiring behavioral intervention is a mandate.

Mr. Terstegge clarified that, in his September 1999 testimony, he noted that districts are mandated to a costly and extensive process before a decision is even made. Mr. Cunningham agreed. He added that nothing in federal law requires districts to go through the detailed and time-consuming steps outlined in the state regulation. Mr. Cunningham argued that, if there were less expensive alternatives and the state chose behavioral intervention, then this regulation imposes a state mandate.

Member Steinmeier said she still believed the state law and regulation was excessive and moved for approval of the staff recommendation with the minor modifications requested by the claimant. Member Beltrami seconded the motion. The motion carried 5-2, with Members Sherwood and Porini voting "No."

APPEAL OF EXECUTIVE DIRECTOR'S ACTION

Item 8 *Charter Schools II* - 99-TC-03
Los Angeles County Office of Education and
San Diego Unified School District, Claimants
Statutes of 1998, Chapter 34, et al.
San Diego Unified School District's Appeal of the Executive Director's Action Granting Department of Finance an Extension for Filing Comments

Pat Jorgensen introduced this item. She explained that the Commission's Executive Director, Paula Higashi, approved the Department of Finance's (DOF's) third request for an extension to file comments on this claim for good cause on July 13, 2000. The DOF was instructed to file separate comments on *Charter School II* and *Charter Schools III* test claims since they were not consolidated.

Ms. Jorgensen noted that staff received the claimant's request for the Commission to deny the extension on July 19, 2000. This date was outside of the required ten-day notice before the July 27, 2000, Commission hearing and so the item was not placed on that agenda.

Ms. Jorgensen explained that the Commission could deny the claimant's appeal or vacate the Executive Director's action to approve the DOF's request for an extension of time.

Jim Cunningham, with the San Diego Unified School District, outlined the chronology of the claim. He argued that the DOF's third request for an extension of time so they could consolidate their responses for *Charter Schools II and III* was not for good cause because the claims were not consolidated, nor should they be.

Ms. Higashi explained that the regulations provide a general 'catchall' for good cause. She thought that consideration of the claims at the same time might be helpful for the analyst and noted that the DOF comments were submitted soon after. Ms. Higashi clarified that the claims had not been consolidated. She added that the hearing date was not in the near future, so the extension did not have an impact in terms of staff or Commission workload.

Mr. Cunningham argued that it delays consideration of the test claim beyond the regulatory and statutory requirements to complete the process in 18-months.

The Chair asked if claimants ever request extensions. Mr. Cunningham replied that they do, but there is a significant difference—delays benefit the state because the state does not begin paying the claims, or interest, until one year after the Statewide Cost Estimate is adopted.

Member Beltrami asked Ms. Higashi if the basis of her decision was possible consolidation. She replied that it was not—the DOF requested the opportunity to review the claims concurrently, but she specifically instructed DOF to file the responses separately.

Member Steinmeier acknowledged Mr. Cunningham's comments regarding the advantages of delays to the state but not claimants. However, she noted that, in the past, it had helped the Commission to consider similar issues concurrently, even if not consolidated. For that reason, she did not object to the extension in this case, though as a general strategy she did not agree with continuous delays.

Mr. Cunningham understood, however, he submitted that these test claims present very different issues and involve different types of entities. Member Steinmeier still said it was helpful for purposes of background and understanding.

Member Sherwood moved for denial of the request. Member Aronberg seconded the motion. The motion carried 6-1, with Member Halsey voting "No."

Lunch Break – 12:00 — 1:30 P.M.

INCORRECT REDUCTION CLAIM

Item 9 *Graduation Requirements* - CSM 4435-I-01
San Diego Unified School District, Claimant
Education Code Section 51225.3
Statutes of 1983, Chapter 498

Claimant's Request for Disqualification of the State Controller's Office Representative

Sean Avalos, Staff Counsel, introduced this item. He noted that the San Diego Unified School District requested the Controller's representative be disqualified from hearing any matter related to the *Graduation Requirements* Incorrect Reduction Claim (IRC) filed by the district. The claimant submitted that it could not be afforded a fair and impartial hearing because the Controller is a party to the claim and that reasonable persons would doubt the Controller's impartiality in an action that challenges a prior decision by the Controller. Staff recommended that the claimant be permitted to present its request, followed by a response from the Controller's representative. The other members could then determine whether to act on the district's request.

Parties were represented as follows: Jim Cunningham, with San Diego Unified School District; Carol Berg, with Education Mandated Cost Network; Jeff Yee and Shawn Silva, with the State Controller's Office; and Peter Cervinka, with the Department of Finance.

Mr. Cunningham submitted that the State Controller's Office (SCO) representative should be disqualified because due process requires there to be an impartial decision-maker. He argued that, unlike other types of claims, an IRC is an action against the SCO, challenging the decision of the SCO representative. Secondly, Mr. Cunningham contended that, if a reasonable person would doubt the representative's impartiality, disqualification was appropriate. He added that showing of actual bias was not necessary. If the SCO representative did not recuse herself, Mr. Cunningham requested the other members vote to disqualify her.

Member Aronberg replied that, by virtue of law, the Controller has a seat on this Commission and that no statute or regulation requires or suggests that a representative dismiss herself or that calls for disqualification in this situation. She stated that it would be absurd to ask the

Chair to recuse herself any time the Department of Finance sits at the table, or Member Steinmeier to do so when there is a school claimant. She added that, as the SCO representative, she acts independently and has not discussed this matter with the Controller or with the SCO's Accounting and Reporting Office.

Member Steinmeier stated that the Commission had always relied on members individually recusing themselves if they felt conflict because they were involved personally and not just through the organization they represent. At this point, she was not willing to change that practice. Member Beltrami agreed and added that he hoped any member would recuse him/herself if a possible conflict existed so there would not even be the appearance of impartiality.

Hearing no motion for dismissal, the Chair called for presentation of the item.

Incorrect Reduction Claim

Mr. Avalos stated that the claimant was alleging that the State Controller's Office (SCO) had incorrectly reduced their reimbursement claims for teachers' salaries for fiscal years 1984-85 through 1995-96. The SCO and the Department of Finance (DOF) refuted the claimant's contentions. Mr. Avalos added that the California Department of Education (CDE) asserted that school districts should not have incurred increased costs related to this mandate since the districts could have adjusted their teaching staff. Staff found that the SCO did not incorrectly reduce the reimbursement claims.

Mr. Cunningham argued that the state cannot impose a new program and avoid its constitutional obligation to reimburse a school district by requiring or authorizing a local agency to eliminate a local program in order to fund a state program. In other words, he submitted that the test claim statute authorized, but did not require, school districts to lay off teachers who teach elective subjects in order to hire teachers who teach the mandated science courses. Mr. Cunningham submitted that his district experienced zero cost savings because they did not lay off any non-science teachers. He argued that, contrary to the staff and SCO's positions, under the statutes and regulations in effect when these claims were filed and this test claim was approved, it is not the claimant's burden to prove that they did not have cost savings.

Mr. Silva agreed with staff's analysis. He submitted that, according to the Parameters and Guidelines, Education Code section 51225.3, and surrounding statutory and constitutional law, only a differential is reimbursable. Mr. Silva argued that the only required costs were those to put science in place of another class, such as changing the room or building, increased salary costs, text book costs, etc. He added that, since the statute provided authority to lay off other teachers, if the school board chose the option to retain its teachers, the cost is not reimbursable.

Mr. Silva explained that the auditors were subtracting the cost savings of releasing non-science teachers from the costs incurred from hiring science teachers to arrive at a total cost. He argued that, to say the cost savings was zero with no documentation to support it leaves the auditors with an unsupportable formula. Mr. Silva submitted that the SCO did not presume offsetting savings, rather, they had not received evidence either way. He disagreed with the

claimant's contention that the SCO has the burden of proof in this case. Mr. Silva alleged that the claimant was attempting to convert an optional expense to one that is required.

Mr. Cervinka concurred with the SCO. He added that districts experienced no increase in instruction time and so there must have been some activity that resulted in cost savings for which the Parameters and Guidelines require documentation.

Member Steinmeier contended that the only reasons a district would not lay off any teachers after adding new classes are if its population increased or the teacher-student ratio changed. She submitted that it would not be directly related to this mandate and asked Mr. Cunningham why he thought the district did not lay any non-science teachers off.

Mr. Cunningham replied that his district still offered all of the same elective classes and so it still needed those teachers. Member Steinmeier explained that her district maintains the student teacher ratio, and so if science sections are added, fewer sections of electives are offered. Mr. Cunningham stated that he was not involved in the budgetary process in 1983 when this mandate went into place, but he researched the records and discovered that no layoffs took place. His assumption was that the district continued all classes and incurred the cost. However, even if the district discontinued an elective class, Mr. Cunningham submitted that it still incurred a cost. He maintained that the state eliminated options and imposed costs to eliminate teachers.

Member Steinmeier recognized the complicated process to eliminate teachers and to hire teachers, especially science teachers. She asked if that was part of the claim. Mr. Cunningham replied that he did not do a differential calculation. He explained that he took into account changes in enrollment and class size and asked for only a proportional amount of science teachers hired. He added that the Commission decided during the test claim phase that staffing was a reimbursable cost, so the only question was whether there were cost savings and he had none.

Member Steinmeier noted that the CDE's hypothesis that districts should not have costs did not support Mr. Cunningham's contentions.

Mr. Cunningham replied that the CDE's letter was submitted during the Statewide Cost Estimate phase. The letter was not testimony and was not made in a hearing. Member Steinmeier clarified that it was part of the record, however.

Member Beltrami questioned the presumptions made by the SCO. Mr. Silva explained that the SCO presumed that districts were reducing non-science teacher staffing in accordance with the increase in science teacher staffing, but that they were not presuming the dollar amounts matched exactly.

Dr. Berg argued that the mandate requires addition of science classes but does not require elimination of electives. She added that, unlike elementary students, the kids do not all move from one class to another—it is not a clean swap of classes. Dr. Berg further noted that science teachers at the secondary level are licensed to teach science and cannot teach several other classes. She stated that the matter was not as simple as the SCO submitted.

Member Beltrami stated that the problem was that the minutes of instruction per day had not increased. Dr. Berg replied that some districts had actually added minutes during zero periods before school or stretched the day for some kids. Member Steinmeier agreed that was true.

Member Aronberg moved staff's recommendation. Member Sherwood seconded the motion. The motion carried 5-2, with Members Beltrami and Lazar voting "No."

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

PROPOSED REGULATORY ACTION

Item 17 Approval of Modifications After Close of Public Comment Period: Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 Adding Section 1183.09 – Dismissals

Ms. Jorgensen introduced this item. She noted that in February 2000, the Commission initiated a rulemaking proposal to establish a procedure for dismissal of a pending action, postponed or placed on inactive status at the result of a party or claimant, which is not reactivated within one year from the date of the postponement or placement on inactive status. On June 29, 2000, the Commission conducted a public hearing on the rulemaking proposal, which coincided with the expiration of the 45-day public comment period. Ms. Jorgensen explained that the commentators proposed several clarifying and technical amendments. Staff agreed with most suggestions, as reflected in the proposed modified text. Accordingly, staff amended the proposed regulations to:

1. Extend the time for notice of a dismissal of a test claim from 60 days to 150 days, since the test claim is more akin to a class action;
2. Provide that, in the case of the dismissal of a test claim, notice shall be made to all potential claimants;
3. Clarify that another local agency or school district may substitute in as a test claimant under existing substitution regulations;
4. Provide that notices of dismissal shall be posted electronically, for due process, to ensure everyone has an opportunity to come forward or be aware of the dismissal; and
5. Provide that postponements made by the Commission or other state agency and postponements made pending the outcome of a similar test claim issue, either before the Commission or the courts, shall not be included in determining whether a test claim has been postponed or placed on inactive status for more than one year.

Staff recommended the Commission approve staff's proposed regulatory text as modified after the close of the public comment period and authorize staff to make any technical, non-substantive edits to the proposed text resulting from the Commission's action. Ms. Jorgensen added that, if the Commission approves staff's proposed modifications, the modified text would go out for an additional 15-day public comment period. Thereafter, staff would prepare the final proposed text and bring the final text to the Commission in September for adoption.

Member Steinmeier thanked the claimants who participated in the process and moved to approve the modifications and send them out for comment. With a second by Member Aronberg, the motion passed unanimously.

Item 18 Approval of Modifications After Close of Public Comment Period: Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Amending Sections 1181.1, 1183, 1183.05, 1183.12, 1185, 1185.01, 1185.02, 1185.2, 1188.4 of Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations (AB 1679)

David Scribner introduced this item. He noted that, in February 2000, the Commission initiated a rulemaking proposal to amend the following sections of its regulations: §§1181.1, 1183, 1183.05, 1183.12, 1185, 1185.01, 1185.02, 1185.2, 1188.4. He stated that the proposed action was necessary to interpret, implement, and make specific Statutes of 1999, Chapter 643, also known as A.B. 1679.

Mr. Scribner noted that, on July 27, 2000, the Commission conducted a public hearing on the rulemaking proposal, which coincided with the expiration of the 45-day public comment period. The commentators proposed several clarifying and technical amendments. Staff agreed with some suggestions, as reflected in the proposed modified text. Accordingly, staff amended the proposed regulations to:

1. Require inclusion of prior State Board of Control and Commission decisions in test claim filings;
2. Give the Executive Director 45 days to consolidate or sever part of any test claim;
3. Clarify that claimants have 30 days to resubmit a completed Incorrect Reduction Claim; and
4. Clarify that the power to order reconsideration of a prior test claim includes the power to amend a test claim decision.

Staff recommended the Commission approve staff's proposed regulatory text as modified after the close of the public comment period and authorize staff to make any technical, non-substantive edits to the proposed text resulting from the Commission's action. Mr. Scribner explained that, if the Commission approved staff's proposed modifications, the modified text would go out for an additional 15-day public comment period. Thereafter, staff would prepare the final proposed text and bring the final text to the Commission in September for adoption.

With a motion by Member Sherwood and second by Member Halsey, the item was approved unanimously.

EXECUTIVE DIRECTOR'S REPORT

Item 19 Workload, Legislation, Next Agenda, etc.

Paula Higashi reported the following:

Pending Legislation. An update is included in the binders.

Parameters and Guidelines. The training issue will be taken up on a case-by-case basis.

Staffing. Commission staff is currently holding interviews for the vacant positions. Cathy Cruz, a new Staff Services Analyst, was introduced.

Future Agendas. The September agenda is included in the binders, though some changes are expected.

Chairperson Porini thanked staff for its hard work towards eliminating the backlog.

CLOSED EXECUTIVE SESSION

Chairperson Porini reported that the Commission would be meeting in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel in consideration and action as necessary and appropriate upon the pending litigation listed on the published notice and agenda; and, Government Code section 11126, subdivision (a) and 17527 to confer on personnel maters listed on the published notice and agenda.

ADJOURNMENT

The Chair reported that the Commission had met in closed executive session pursuant to Government Code 11126, subdivision (e), to confer with and receive advice from Legal Counsel, to report, in consideration and action as necessary and appropriate upon the pending litigation listed on the published notice and agenda; and, Government Code section 11126, subdivision (a), and 17527 to confer on personnel matters listed on the published notice and agenda.

Hearing no further business, Chairperson Porini adjourned the meeting at 3:00 p.m.

PAULA HIGASHI
Executive Director

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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, as amended by Statutes of 1997, Chapter 828; Title 5, California Code of Regulations, Sections 850-874; and Filed on March 23, 1998 By the San Diego Unified School District, Claimant.	No. 97-TC-23 *Standardized Testing and Reporting* 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 on August 24, 2000)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on August 25, 2000.

Paula Higashi

Paula Higashi, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	No. 97-TC-23
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, as amended by Statutes of 1997, Chapter 828; Title 5, California Code of Regulations, Sections 850-874; and Filed on March 23, 1998 By the San Diego Unified School District, Claimant.	*Standardized Testing and Reporting* 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 on August 24, 2000)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on July 27, 2000 during a regularly scheduled hearing. James Cunningham, Richard Knott, and Robert Raines appeared for San Diego Unified School District. Jeannie Oropeza and Pete Zervinka appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 7-0, approved this test claim.

BACKGROUND AND FINDINGS

Background on Statewide Achievement Tests

The test claim legislation and regulations established a program related to achievement testing that school districts must administer to pupils in the state – the Standardized Testing and Reporting (STAR) Program. The STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education. School districts are also required to engage in numerous activities related to test administration and reporting.

The state has required school districts to administer achievement tests to pupils for decades. For example, achievement tests were required for pupils in grades 6 and 12 under the California School Testing Act of 1969.[1] In 1972, the Legislature expressed its intent regarding pupil testing as follows:

> "It is the intent of the Legislature . . . to determine the effectiveness of school districts and schools in assisting pupils to master the fundamental educational skills towards which instruction is directed. The program of statewide testing shall provide the public, Legislature, and school districts evaluative information regarding the various levels of proficiency achieved by different groups of pupils of varying socioeconomic backgrounds, so that the Legislature and individual school districts may allocate educational resources in a manner to assure the maximum educational opportunities for all pupils. The program or statewide testing shall identify unusual success or failure and the factors which appear to be responsible, so that appropriate action may be taken at the district and state level to obtain the highest quality education for all public school pupils."[2]

In 1990, the Legislature expressed that the purpose of California's public school system is to "facilitate the development of each and every one of its pupils to become a self-motivated, competent, and lifelong learner."[3] The Legislature stated that: "the current pupil assessment system does not meet [these] purposes."[4] The Legislature further declared that:

> "There is no consistent system that pupils and parents can use to assess the performance of schools and school districts in providing effective programs and to measure the academic achievement of pupils. The five grade levels currently tested under the California school assessment program do not provide the most efficient assessment of overall pupil achievement."[5]

Statutes of 1990, Chapter 760 modified the state's achievement testing to require the testing of pupils in grades 4, 5, 8, and 10. Former Education Code section 60600.1, as added by Statutes of 1990, Chapter 760, provided that:

> "[Chapter 760] shall remain in effect only until January 1, 1995, and as of that date is repealed unless a later enacted statute, which is enacted *before* January 1, 1995, deletes or extends that date." (Emphasis added.)

The Legislature did not enact a statute before January 1, 1995 that either deleted or extended the date regarding the administration of achievement tests. However, Statutes of 1995, Chapter 975, enacted the Leroy Greene California Assessment of Academic Achievement Act,

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[1] *See* former Education Code section 12820 cited as Exhibit C in the claimant's test claim filing.

[2] *See* former Education Code section 12821 cited as Exhibit C in the claimant's test claim filing.

[3] Section 1 of Statutes of 1990, Chapter 760 cited as Exhibit E in the claimant's test claim filing.

[4] Section 1.3 of Statutes of 1990, Chapter 760 cited as Exhibit E in the claimant's test claim filing.

[5] *Ibid.*

which provided incentive funding for the provision of achievement testing to pupils in grades 2 through 10, inclusive, to each school district that certifies to the Superintendent of Public Instruction that they will administer such tests. The Commission notes that the achievement-testing program enacted under Chapter 975 was optional. Since the Legislature did not enact a statute by the requisite deadline set forth in Chapter 760, the Commission found that mandatory achievement testing was repealed by operation of law effective January 1, 1995.

Does the Test Claim Legislation Impose a New Program or Higher Level of Service?

The Commission found that the test claim legislation and regulations involve the administration of pupil achievement tests. Public education in California is a peculiarly governmental function administered by school districts as a service to the public. Moreover, the test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Therefore, the Commission found that administering pupil achievement tests constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.[6]

Prior Law Related to Achievement Tests

The Commission noted that the law in effect immediately before the enactment of the test claim legislation did not require school districts to administer achievement tests to pupils. Rather, prior law set up an incentive program for school districts that administer achievement tests to all pupils in grades 2 though 10.[7] Former Education Code section 60640 provided $5 per pupil tested to those districts that certified to the Superintendent of Public Instruction that it would administer achievement tests to all pupils in grades 2 through 10. Section 60640 did not require districts to administer achievement tests to those pupils.

The Test Claim Legislation: Current Law Related to the Standardized Testing and Reporting (STAR) Program

The Commission found that the test claim legislation and regulations established a program related to achievement testing that school districts must administer to pupils in the state – the Standardized Testing and Reporting (STAR) Program.[8]

The Commission found that the STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education.[9] The Commission found that

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[6] *Long Beach Unified School Dist.* v. *State of California* (1990) 225 Cal.App.3d 155, 172.

[7] *See* former Education Code section 60640 cited as Exhibit F in the claimant's test claim filing.

[8] The Commission noted that the original test claim filing included portions of the Education Code that related to the Academic Skills Assessment Program. However, the Department of Education has yet to promulgate regulations to implement the Program. Therefore, the claimant filed a motion to partially sever and withdraw those portions of this test claim that relate to the Academic Skills Assessment Program.

[9] The State Department of Education is administered through (1) the State Board of Education, which is the governing and policy determining body of the Department and (2) the Director of Education who is responsible for all executive and administrative functions of the Department and is the executive officer of the State Board of Education. *See* Education Code sections 33301, 33303. The State Superintendent of Public Instruction oversees

school districts must also: designate a STAR Program district coordinator and STAR Program test site coordinator at each test site; administer an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was enrolled in the district for less than 12 months before the time the last STAR Program test was administered; exempt pupils under certain circumstances; include STAR Program test results in the pupil's record or achievement; report STAR Program test results to the district's governing board or county board of education and to the pupil's parent or guardian; submit a report to the Superintendent of Public Instruction; contract with a test publisher to receive the tests; and submit whatever information the State Department of Education deems necessary to permit the State Superintendent of Public Instruction to prepare reports on the results of the STAR Program.[10]

The Commission also found that the state had required school districts to administer achievement tests to pupils since the 1960's, until Statutes of 1991, Chapter 760, repealed the mandatory achievement-testing requirement as of January 1, 1995. Statutes of 1995, Chapter 975, enacted the Leroy Greene California Assessment of Academic Achievement Act (Achievement Act), which provided incentive funding for the provision of achievement testing to pupils in grades 2 through 10, inclusive, to each school district that certifies to the Superintendent of Public Instruction that they will administer such tests. The Commission found that under the Achievement Act, the law in effect between January 1, 1996 and October 10, 1997, the operative date of the test claim legislation, school districts could *voluntarily* administer achievement tests to district pupils. However, the test claim legislation reinstated mandatory achievement testing under the STAR Program beginning on October 10, 1997. Thus, the Commission found that the test claim legislation and regulations have imposed a new program or higher level of service upon school districts since the law in effect prior to the enactment of the test claim legislation did not require the administration of achievement tests.

Based on the foregoing, the Commission found that the test claim legislation and regulations impose a new program upon school districts for the administration of the STAR Program.

Does the Test Claim Legislation Constitute Costs Mandated by the State?

Testing In General

The Commission found that in order for the test claim legislation and regulations to impose a reimbursable program under section 6, article XIII B of the California Constitution, the newly required activities must be state mandated.[11] The issue of whether the test claim legislation and regulations imposed costs mandated by the state centers on whether Government Code section 17556, subdivision (e), applies.

The Commission recognized that Government Code section 17556, subdivision (e), provides:

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the schools of this state and executes, under the direction of the State Board of Education, the policies that have been decided upon by the Board. The Superintendent is also ex-officio the director and executive director of the State Department of Education. *See* Education Code sections 33301-33303, 33111, 33112.

[10] *See* Education Code sections 60607, 60615, 60630 60640, 60641, 60643, and Title 5, California Code of Regulations, sections 851-853, 855-860, 865, 867-869, 871, 873.

[11] *Lucia Mar Unified School Dist.*, *supra* 44 Cal.3d 830, 835.

"The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

" .....

"(e) The statute . . . includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."

The Commission also noted that section 60640, subdivision (h), provides:

"The Superintendent of Public Instruction shall apportion funds to enable school districts to meet the [STAR Program] requirements. . . . The State Board of Education shall establish the amount of funding to be apportioned. The amount to be apportioned shall be up to eight dollars ($8) per test administered to a pupil in grades 2 to 11, inclusive."

The claimant contended that section 17556, subdivision (e), is inapplicable to the present test claim because section 60640, subdivision (h), did not appropriate additional revenue in an amount sufficient to fund the mandate.[12] The claimant further contended that the State Board of Education's reimbursement rate of $6.65 per test, with an additional $0.15 per test for districts requesting preprinted answer sheets, is not enough to cover the cost of administering the STAR Program.[13]

The Commission found that the test claim legislation *authorized* the Superintendent of Public Instruction to apportion funds for administration of the STAR Program as established by the State Board of Education. However, the test claim legislation did not itself include "additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate." Thus, the Commission found that Government Code section 17556, subdivision (e), is inapplicable to this test claim. Accordingly, the Commission found that the test claim legislation imposed costs mandated by the state upon school districts.

The Commission noted that the Legislature has appropriated the following amounts for administration of the STAR Program in the state Budget Act: 1997-98 – $30,400,000; 1998-99 – $39,700,000; 1999-00 – $42,100,000. The Commission noted that funds received by school districts for the administration of the STAR Program pursuant to the State Board of Education's reimbursement rate should be offset against total claim amounts for this test claim.

Testing of Children with Disabilities

The Commission found that the test claim legislation requires that: (1) children with disabilities be exempted from testing for pupils if the pupil's individualized education program has an

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[12] The Commission noted that the Department of Finance states: "we have concluded that the statute may have resulted in some costs mandated by the State."

[13] *See* Claimant's test claim filing, Exhibit H, Nick Bohl's declaration. The claimant estimates it would cost San Diego Unified School District $14.00 per test per fiscal year to administer the STAR Program.

exemption provision; (2) districts determine the appropriate grade level test for each pupil in a special education program; and (3) districts provide appropriate testing adaptation or accommodations to pupils in special education programs.

DOF contended that these activities stem from federal law and therefore, pursuant to Government Code section 17556, subdivision (c), are not reimbursable.[14] The Commission recognized that Government Code section 17556, subdivision (c), provides:

> "The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> " .....
>
> "(c) The statute . . . implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute . . . mandates costs which exceed the mandate in that federal law or regulation."

Specifically, DOF cited to subdivision (a)(16), section 1412 of the United States Code, which provides:

> "(16) Performance goals and indicators
>
> "The State—
>
> "(A) has established goals for the performance of children with disabilities in the State that—
>
> "(i) will promote the purposes of this chapter, as stated in section 1400(d) of this title; and
>
> "(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;
>
> "(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;
>
> "(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and
>
> "(D) based on its assessment of that progress, will revise its State improvement plan under part A of subchapter IV of this chapter as may be needed to improve its performance, if the State receives assistance under that part."

The Commission found that, based on the plain reading of subdivision (a) above, that federal law *does not* require testing exemptions; the determination of appropriate test levels; or the

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[14] Department of Finance's July 10, 2000 filing at page 2.

provision of testing accommodations for children with disabilities. Therefore, the Commission found that these activities are reimbursable and that funding received by school districts for administration of the STAR Program shall be offset against reimbursement claims.

CONCLUSION

Based on the foregoing, the Commission concluded that the test claim legislation and regulations for the STAR Program impose a reimbursable state-mandated program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

- Administration of the STAR Program tests to all pupils in grades 2 through 11, inclusive. (Ed. Code, §§ 60640, subds. (b), (c), 60641, subd. (a); Cal. Code Regs., tit. 5, §§ 851, 852, subd. (b), 853, and 855.) Costs associated with teacher time to administer the test are not reimbursable.
- Designation of a STAR Program district coordinator. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.)
- Designation of a STAR Program test site coordinator at each test site. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.)
- Administration of an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. Only reimbursable to the extent such tests are available. (Ed. Code, § 60640, subd. (g); Cal. Code Regs., tit. 5, § 851, subd. (a).) Costs associated with teacher time to administer the test are not reimbursable.
- Exemption from testing for pupils if the pupil's individualized education program has an exemption provision. (Ed. Code, § 60640, subds. (e), (j); Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Determination of the appropriate grade level test for each pupil in a special education program. (Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Provision of appropriate testing adaptation or accommodations to pupils in special education programs. (Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Inclusion of STAR Program test results in each pupil's record of accomplishment. (Ed. Code, §§ 60607, subd. (a), 60641, subd. (a).)
- Reporting of individual STAR Program test results in writing to each pupil's parent or guardian and to the pupil's school and teachers. (Ed. Code, § 60641, subds. (b) and (c); Cal. Code Regs., tit. 5, § 863.)
- Reporting of district-wide, school-level, and class-level results to the school district's governing board or county office of education. (Ed. Code, § 60641, subd. (d); Cal. Code Regs., tit. 5, § 864.)

- Submission of a report on the STAR Program to the Superintendent of Public Instruction. (Ed. Code, § 60640, subd. (j); Cal. Code Regs., tit. 5, § 862.)
- Contracting with a test publisher selected by the State Board of Education using an agreement approved by the State Board of Education. (Ed. Code, § 60643, subds. (a)(2) and (c); Cal. Code Regs., tit. 5, §§ 860, 873.) This activity is limited to completing the agreement approved by the State Board of Education. Modification of the approved agreement by school districts to include any additional materials or services pursuant to Education Code section 60643, subdivision (e)(12) is not reimbursable.
- Payment of sales tax to the publisher. (Cal. Code Regs., tit. 5, § 856.)
- Completion of delivery schedule and order form. (Cal. Code Regs., tit. 5, § 874.)
- Provision to the test publisher of enrollment and test order data by grade level. (Cal. Code Regs., tit. 5, § 874.)
- Administration of the standard agreement pursuant to the State Department of Education's regulations. (Cal. Code Regs., tit. 5, §§ 856, 869, subd. (b), and 871.)
- Exemption of pupils from the STAR Program tests upon request of their parent or guardian. (Ed. Code, §§ 60615, 60640, subd. (j); Cal. Code Regs., tit. 5, § 852, subd. (a).)
- Submission to the State Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the STAR Program. (Ed. Code, § 60630, subd. (b); Cal. Code Regs., tit. 5, § 861.)
- Training and review of the STAR Program requirements as outlined in the test claim legislation and regulations by school district staff.
- Implementation of procedures relating the administration of the STAR Program.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 350, Sacramento, California 95814.

August 25, 2000, I served the:

Adopted Statement of Decision
97-TC-23; *Standardized Testing and Reporting,* San Diego Unified School District Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, Statutes of 1997, Chapter 828, Title 5, California Code of Regulations, Sections 850-874

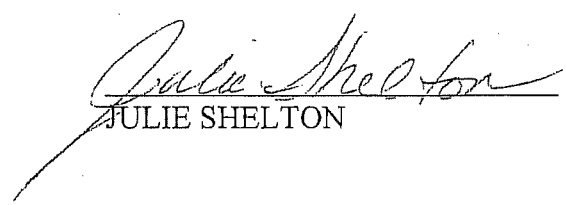
by placing a true copy thereof in an envelope addressed to:

Mr. James A. Cunningham
Legislative Mandate Specialist
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92130

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 25, 2000, at Sacramento, California.



JULIE SHELTON

STATE OF CALIFORNIA GRAY DAVIS, Governor

COMMISSION ON STATE MANDATES
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October 6, 2000

TO: ALL INTERESTED PERSONS

FROM: Paula Higashi, Executive Director

RE: New Filings and Agenda

The Commission on State Mandates will hold its regular monthly meeting and hearing at **9:30 a.m.** on **October 26, 2000** in the State Capitol, Room 126. The list of new filings and agenda are enclosed. The Commission will take a lunch break and reconvene at **1:00 p.m.**

Testimony at the Commission Hearing. If you plan to address the Commission on an agenda item please notify the Commission Office by noon, two days before the hearing. When calling, identify the item and the entity you represent. For hearings on test claims and incorrect reduction claims, witnesses will be sworn in en masse at the commencement of the hearing and again when the Commission reconvenes after lunch. The Chairperson reserves the right to impose time limits on presentations as may be necessary to complete the agenda.

Agenda Materials. All back-up material and supporting documentation for public meetings are available for public inspection at the Commission Office, 980 Ninth Street, Suite 300, Sacramento, California 95814; (916) 323-3562. In addition, a complete copy of the above-described materials will be available for public inspection at the meeting.

Web Site. Agenda items are available on the Commission's Web Site (http://www.csm.ca.gov/). After reaching the site's home page, click on the words "Current Hearing" on the left side of the page for the hearing agenda. Generally, the short agenda will be uploaded two weeks prior to the hearing. Items will be uploaded approximately one week before the hearing without exhibits and may be accessed from the agenda. If an item is postponed prior to the hearing, notice will be posted on the agenda. Following the hearing, Commission actions will be posted on the agenda, and revised items will be posted upon completion. Each month's agenda will remain posted until the following month is uploaded.

The approved minutes of previous commission meetings are also on the Web Site in Microsoft Word and PDF formats. To access the minutes, click on the words "Hearings/Minutes" on the left side of any page. The most recent minutes become available following approval by the Commission, generally after the next hearing. Also, minutes from the past three years are available on the Web Site.

Special Accommodations. If you need any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Enclosures

NEW FILINGS

September 9, 2000 through October 4, 2000

09/22/00	00-4345-I-01	San Diego County Office of Education	Credential Monitoring Incorrect Reduction Claim, Statutes of 1987, Chapter 1376,Education Code Sections 44256, 44258.1, 44258.2, 44258.5, 44258.7, and 44258.9.
09/25/00	98-TC-09	County of Los Angeles	Mentally Disordered Offenders' Extended Commitment Proceedings, Amendment adding Penal Code Sections 2972 and 2972.1, Statutes of 1986, Chapter 858, Statutes of 1987, Chapter 687, Statutes of 1989, Chapter 228, Statutes of 2000, Chapter 324.
10/02/00	98-TC-11	County of Los Angeles	Animal Adoption, Amendment adding Business and Professions Code, Section 4855 and California Code of Reductions, Title 16, Division 20, Article 4, Section 2031 (renumbered to 2032.3 on May 25, 2000).

COMMISSION ON STATE MANDATES
NOTICE AND AGENDA

State Capitol, Room 126

Sacramento, California

October 26, 2000

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 September 28, 2000

III. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

TEST CLAIM

Note: The parties to the claim and witnesses will be sworn in en masse before consideration of Item 2.

Item 2 *Animal Adoption* - 98-TC-11
County of Los Angeles, City of Lindsay, Southeast Area Animal Control Authority, and Counties of Fresno and Tulare, Co-Claimants
Civil Code Sections 1815, 1816, 1834, 1834.4, 1845—1847, 2080
Food and Agriculture Code Sections 17005, 17006, 31108, 31752, 31752.5, 31753, 31754, 32001, 32003
Penal Code Sections 597.1 and 599d
Statutes of 1998, Chapter 752
Amended to add: Business and Professions Code Section 4855
Statutes of 1978, Chapter 1314
California Code of Regulations, Title 16, Section 2031 (renumbered Section 2032.3 on May 25, 2000)

Following presentation of the Test Claim by the Co-Claimants and the Department of Finance, the Commission will hear Public Comment pursuant to the Bagley-Keene Open Meetings Act (Gov. Code, § 11125.7). The Chairperson may impose time limits as provided in the Commission's regulations (Cal. Code Regs., tit. 2, § 1182.2, subd. (b)(2).).

IV. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin later on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino* v. *State of California, et al.*, Case Number SCV52190, in the Superior Court of the State of California, County of Los Angeles.
2. *County of Sonoma* v. *Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.
3. *San Diego Unified School District* v. *Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
4. *Long Beach Unified School District* v. *Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District* v. *Commission on State Mandates, et al*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
6. *State of California, Department of Finance* v. *Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.
7. *City of El Monte et al.* v. *Commission on State Mandates*, Petition for Review pending in the Supreme Court [Case Number 3 Civil C025631, in the Appellate Court of California, Third Appellate District and Sacramento County No. 95CS02704].
8. *City of San Diego* v. *Commission on State Mandates, et al.* Case Number GIC 751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles* v. *Commission on State Mandates, et al.* Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
10. *County of San Bernardino* v. *Commission on State Mandates, et al.* Case Number SCVSS69731, in the Superior Court of the State of California, County of San Bernardino.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).).

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from Personnel Sub-Committee.

V. REPORT FROM CLOSED EXECUTIVE SESSION

VI. PROPOSED CONSENT CALENDAR (action)

Note: If by 4:00 p.m. on Wednesday, October 25, 2000, there is no objection to any of the following items marked with an asterisk (*), the Executive Director will include it on the Proposed Consent Calendar that will be presented at the meeting. The Commission will determine which items will remain on the Consent Calendar.

VII. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 3* *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* – 97-TC-05
County of Los Angeles, Claimant
Government Code Section 7576
Statutes of 1984, Chapter 1747, Statutes of 1985, Chapter 1274, Statutes of 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1
California Department of Mental Health Information Notice No: 86-29

Item 4* *School Site Councils and Brown Act Reform*– CSM 4501
Kern Union High School District, San Diego Unified School District, and County of Santa Clara, Co-Claimants
Education Code Section 35147
Government Code Section 54952
Statutes of 1993, Chapter 1138
Statutes of 1994, Chapter 239

B. ADOPTION OF PROPOSED AMENDMENT TO PARAMETERS AND GUIDELINES

Item 5* *Open Meetings Act* – 98-PGA-08
County of Los Angeles, Requester
Statutes of 1986, Chapter 641

C. ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

Item 6* *Annual Parent Notification - Staff Development* – 97-TC-24
Education Code Section 48980, subdivisions (c) and (h)
Statutes of 1997, Chapter 929

D. ADOPTION OF REGULATIONS PURSUANT TO GOVERNMENT CODE SECTION 17527, SUBDIVISION (g).

Item 7* Adoption of Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Amending Section 1188.4 of Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations - (AB 1679), As Modified on September 28, 2000, After Close of Public Comment Period.

Item 8* Approval of Modifications to Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 - Applications for Findings of Significant Financial Distress. Articles 1 and 6.5, Amending Sections 1181.2, 1181.3, 1186.5, 1186.51. 1186.52, and 1186.72; Renumbering and Amending Sections 1186.6, 1186.61, and 1186.62; and Adding New Sections 1186.6, 1186.61, and 1186.62, After Close of Public Comment Period.

AFTERNOON SESSION: 1:00 P.M.

VIII. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

The parties to the claims and witnesses will be sworn in en masse before consideration of Test Claims, Incorrect Reduction Claims, and Proposed Statements of Decision that are not adopted on the consent calendar.

A. TEST CLAIMS

Item 9 *Emergency Apportionments* - 97-TC-14
Alameda County Office of Education, Claimant
Education Code Sections 41320, 41320.1, 41320.2, 41320. 3, 41321, 41322, 41323, 41325, 41326, 41326.1, 41327, 41328
Statutes of 1981, Chapter 70; Statutes of 1987, Chapter 990; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 171; Statutes of 1991, Chapter 1213; Statutes of 1993, Chapters 589 and 924; Statutes of 1994, Chapter 1004; Statutes of 1995, Chapters 50 and 525

B. INCORRECT REDUCTION CLAIM

Item 10 *Collective Bargaining* - CSM 99-4425-I-04
West Valley-Mission Community College District, Claimant
Statutes of 1975, Chapter 961

Item 15* *County Office Budget Process and Financial Statements* - 97-TC-20
Alameda County Office of Education, Claimant
Education Code Sections 1040, 1240, 1240.2, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1628, 1630, 14050, 33127, 33128, 33129, 33132, 42120, 42129, and 42133
Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 843; Statutes of 1979, Chapters 10 and 221; Statutes of 1983, Chapter 1276; Statutes of 1985, Chapter 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 1372; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525
California Code of Regulations, Title 5, Sections 15467-15493

D. PROPOSED STATEMENTS OF DECISION: DISMISSAL OF WITHDRAWN TEST CLAIM PROVISIONS

Item 16* *Academic Assessments*
San Diego Unified School District, Claimant
Dismissal of Education Code Sections 60605 and 60607, Subdivisions (b) - (e), Statutes of 1997, Chapter 828 (Severed from 97-TC-23)

Item 17* *Budget Process Financial Statements, and County Oversight*
Alameda County Office of Education, Claimant
Dismissal of California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08 (Severed from 97-TC-19)

Item 18* *County Office Budget Process and Financial Statements*
Alameda County Office of Education, Claimant
Dismissal of California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08 (Severed from 97-TC-20)

E. PROPOSED STATEMENT OF DECISION: DISMISSAL OF INCORRECT REDUCTION CLAIM

Item 19* *Incorrect Reduction Claim: Local Coastal Programs*
City of Sand City, Claimant
Public Resources Code Section 30000 et seq.,
Statutes of 1976, Chapter 1330

Item 11* *Photographic Record of Evidence* - 98-TC-07
City of Los Angeles, Claimant
Penal Code Section 1417.3
Statutes of 1985, Chapter 875; Statutes of 1986, Chapter 734; Statutes of 1990, Chapter 382

Item 12* *Law Enforcement Racial and Cultural Diversity Training* -97-TC-06
County of Los Angeles, Claimant
Penal Code Section 13519.4
Statutes of 1992, Chapter 1267

Item 13* *Health Benefits for Survivors of Peace Officers and Firefighters* 97-TC-25
City of Palos Verdes Estates, Claimant
Labor Code Section 4856, Subdivisions (a) and (b)
Statutes of 1996, Chapter 1120; Statutes of 1997, Chapter 193

Item 14* *Budget Process Financial Statements, and County Oversight* - 97-TC-19
Alameda County Office of Education, Claimant
Education Code Sections 1241.5, 17150/17850, 33127, 33128, 33129, 33132, 35035, 42100, 42101, 42103, 42122, 42123, 42124, 42125, 42126, 42127, 42127.1, 42127.2, 42127.3, 42127.4, 42127.5, 42127.6, 42127.9, 42128, 42129, 42130, 42131, 42133, 42140, 42141, 42142, and 42637 and Government Code Section 3540.2
Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 36; Statutes of 1979, Chapters 221 and 282; Statutes of 1980, Chapter 1354; Statutes of 1981, Chapters 100 and 1093; Statutes of 1984, Chapter 134; Statutes of 1985, Chapters 185 and 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917, 1025 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 525; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 237, 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525 and 530; Statutes of 1996, Chapters 227, 1071 and 1158
California Code of Regulations, Title 5, Sections 15440-15466

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Item 20 Staff Report (information and possible action)

X. EXECUTIVE DIRECTOR'S REPORT

Item 21 Workload, Legislation, Next Hearing, etc. (information)

XI. PUBLIC COMMENT

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ITEM 16

PROPOSED STATEMENT OF DECISION
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Education Code Sections 60605 and 60607, Subdivisions (b)-(e)
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Academic Assessments

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ITEM 16

PROPOSED STATEMENT OF DECISION
DISMISSAL OF PORTIONS OF TEST CLAIM

Education Code Sections 60605 and 60607, Subdivisions (b)-(e)
Statutes of 1997, Chapter 828

Academic Assessments

EXECUTIVE SUMMARY

On March 23, 1998, the San Diego Unified School District filed a test claim, 97-TC-23, alleging that Statutes of 1997, Chapter 828, imposed a reimbursable state mandated program upon school districts. Specifically, the claimant contended that, under the test claim legislation, school districts must administer achievement testing through two separate programs – the Academic Skills Assessment Program and the Standardized Testing and Reporting (STAR) Program.

On June 14, 2000, the claimant submitted a motion to withdraw Education Code sections 60605 and 60607, subdivisions (b)-(e) from test claim, 97-TC-23. These sections relate to the Academic Skills Assessment Program, which, by statute, is to be implemented in accordance with regulations adopted by the Department of Education. Claimant's motion to withdraw is based on the fact that the California Department of Education has not adopted regulations to implement the Academic Skills Assessment Program. In addition, claimant notes that the California Department of Education, in its 1999-2000 Standards and Assessment Update, states that the Academic Skills Assessment Program is currently on hold. Accordingly, school districts are neither engaging in any activities nor incurring any costs under the Academic Skills Assessment Program.

At the claimant's request, the remaining portion of the test claim was renamed Standardized Testing and Reporting. The Commission adopted its decision to approve this test claim at the August hearing.

Staff Recommendation

Based on the foregoing, staff recommends that the Commission adopt the Proposed Statement of Decision on the following page to record the dismissal of Education Code sections 60605 and 60607, subdivisions (b)-(e) from test claim, 97-TC-23.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE DISMISSAL OF PORTIONS OF TEST CLAIM: Education Code Sections 60605 and 60607, Subdivisions (b)-(e), as amended by Statutes of 1997, Chapter 828; Filed on March 23, 1998 By the San Diego Unified School District, Claimant.	No. 97-TC-23 *Academic Assessments* PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Proposed on October 26, 2000)*

PROPOSED STATEMENT OF DECISION

On March 23, 1998, the San Diego Unified School District filed a test claim, 97-TC-23, alleging that Statutes of 1997, Chapter 828, imposed a reimbursable state mandated program upon school districts. Specifically, the claimant contended that, under the test claim legislation, school districts must administer achievement testing through two separate programs – the Academic Skills Assessment Program and the Standardized Testing and Reporting (STAR) Program.

On June 14, 2000, the claimant submitted a motion to sever and withdraw Education Code sections 60605 and 60607, subdivisions (b)-(e) from test claim, 97-TC-23. These sections relate to the Academic Skills Assessment Program, which, by statute, is to be implemented in accordance with regulations to be adopted by the Department of Education.

CONCLUSION

IT IS HEREBY ORDERED that Education Code sections 60605 and 60607, subdivisions (b)-(e), as added by Statutes of 1992, Chapter 722, are dismissed from test claim, 97-TC-23.

The claimant, or another school district may file a new test claim on the above-referenced matter. However, such claim shall be subject to a new filing date and reimbursement period.

TATE OF CALIFORNIA
COMMISSION ON STATE MANDATES
30 NINTH STREET, SUITE 300
ACRAMENTO, CA 95814
HONE: (916) 323-3562
6) 445-0278
csminfo@osm.ca.gov

August 24, 2000

Mr. James A. Cunningham
Legislative Mandate Specialist
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92130

State Agencies and Interested Parties (See attached mailing list)

RE: Notice of Dismissal of Education Code Sections 60605 and 60607, subdivisions (b)-(e) from:
Test Claim: *Standardized Testing and Reporting*
(formerly *Academic Assessments*) 97-TC-23
San Diego Unified School District
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643
Statutes of 1997, Chapter 828
Title 5, California Code of Regulations, Sections 850-874

Dear Mr. Cunningham:

On June 14, 2000, you submitted a motion to sever and withdraw those portions of the *Academic Assessments* test claim alleging that the Academic Skills Assessment Program imposes reimbursable state-mandated costs upon school districts. The reason for this motion was the California Department of Education's delay in adopting regulations to implement the Program. On July 3, 2000, I sent a letter to you and the Department of Finance of my intent to sever and rename this test claim. The Commission approved the *Standardized Testing and Reporting* Test Claim at the July 27, 2000 hearing. The hearing on dismissal of Education Code sections 60605 and 60607 subdivisions (b)-(e) from this test claim is scheduled for October 26, 2000.

Written Comments

San Diego Unified School District, interested parties, and state agencies may file written comments regarding the dismissal of these Education Code sections by September 29, 2000. You are advised that the Commission's regulations require comments filed with the Commission to be simultaneously served on other interested parties (on the mailing list), and to be accompanied by a proof of service on those parties. Contact Commission staff if you need a copy of the mailing list.

Commission Hearing

The hearing on the dismissal of Education Code sections 60605 and 60607, subdivisions (b)-(e) is scheduled for October 26, 2000 at 9:30 a.m. in Room 126 of the State Capitol, Sacramento, California. This item will be on the proposed consent calendar unless you or a representative of your agency will testify at the hearing, and if other witnesses will appear.

Please contact David E. Scribner at (916) 323-8221 if you have any questions.

Sincerely,

Paula Higashi

PAULA HIGASHI
Executive Director

f:\Mandates\1997\97to23\Notice of Dismissal

MAILED: Mail List FAXED:
DATE: 8-24 INITIAL: AS
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WORKING BINDER:

PUBLIC HEARING

COMMISSION ON STATE MANDATES

RECEIVED
NOV 0 1 2000
COMMISSION ON
STATE MANDATES

--o0o--

ORIGINAL

TIME: 9:30 a.m.

DATE: October 26, 2000

PLACE: State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

--o0o--

Reported By: YVONNE K. FENNER, CSR License #10909, RPR

1 A P P E A R A N C E S

2 COMMISSION MEMBERS

3 ANNETTE PORINI, Chairperson
4 Representative of B. Timothy Gage, Director
State Department of Finance

5 ALBERT P. "AL" BELTRAMI
6 Public Member

7 HEATHER A. HALSEY
Representative for Steven Nissen, Director
8 Office of Planning and Research

9 JOHN S. LAZAR
City Council Member
10 Turlock City Council

11 BRUCE ROBECK
Representative of Kathleen Connell
12 State Controller

13 WILLIAM SHERWOOD, Vice Chairperson
Representative of Philip Angelides
14 State Treasurer

15 JOANN E. STEINMEIER
School Board Member
16 Arcadia Unified School District

17

18 COMMISSION STAFF

19 PAULA HIGASHI, Executive Director

20 PAT HART JORGENSEN, Chief Legal Counsel

21 SEAN P. AVALOS, Staff Counsel

22 CAMILLE SHELTON, Staff Counsel

23

24

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PUBLIC PRESENTATIONS:

JAMES APPS
Department of Finance

ROBERT BALLENGER, Senior Manager
Animal Care and Control Department
County of Los Angeles

TERI BARNATO
Association of Vets for Animal Rights

ALLAN P. BURDICK, Vice President
DMG Maximus on behalf of
County of Tulare and City of Lindsay

PAT CLAERBOUT, Operations Manager
Southeast Area Animal Control Authority

HOWARD J. DAVIES
Mariposa County Sheriff

DR. DENNIS DAVIS, D.V.M.
Animal Care and Control Department
Lancaster Shelter
County of Los Angeles

LT. RAMON FIGUEROA
Department of Public Safety
City of Lindsay

GREG FOSS
County of Mendocino

MEG HALLORAN, Deputy Attorney General
on behalf of the Department of Finance

VIRGINIA HANDLEY
The Fund for Animals

JOHN HUMPHREY
San Diego Animal Control

LEONARD KAYE, on behalf of County of Los Angeles

DOLORES M. KEYES
Coastal Animal Services Authority

DENA MANGIAMELE, D.V.M.
San Diego Animal Control

KATE M. NEISWENDER, Consultant
Senate Committee on Natural Resources and Wildlife

1 LOIS NEWMAN
Cat and Dog Rescue Association
2
KEITH PETERSEN, MPA, JD, President
3 SixTen and Associates

4 LYNN PODESTO
Department of Finance
5
MIKE ROSS
6 Contra Costa County

7 DANIEL G. STONE, Deputy Attorney General
on behalf of the Department of Finance
8
PAMELA STONE, Senior Manager/Legal Counsel
9 DMG Maximus on behalf of
City of Lindsay and County of Tulare
10
RICHARD WARD
11 State Humane Association of California

12 PATRICIA WILCOX
California Animal Control Directors Association
13
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1 discussion as necessary and appropriate upon pending
2 litigation listed on the published notice and agenda and
3 Government Code Section 11126, subdivision A, and 17527
4 to confer on personnel matters listed on the published
5 notice and agenda.
6 We will go back to our regular calendar now.
7 Paula.
8 MS. HIGASHI: We'd like to start with the
9 proposed consent calendar, and that consists of items 3,
10 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19.
11 CHAIRPERSON PORINI: All right. Any questions
12 or comments on any of the items on the consent calendar?
13 MR. BELTRAMI: Move adoption, Madame Chair.
14 CHAIRPERSON PORINI: I have a motion.
15 MS. HALSEY: Second.
16 CHAIRPERSON PORINI: And a second. All those in
17 favor indicate with aye.
18 MULTIPLE SPEAKERS: Aye.
19 CHAIRPERSON PORINI: Opposed? Abstain?
20 Motion carries.
21 That takes us to our next item, one of the
22 nonconsent calendar items.
23 MS. HIGASHI: Yes. And let me just explain that
24 Items 4, 5, and 10 are postponed.
25 CHAIRPERSON PORINI: All right. Before we get
26 going, I need to leave the room for a few minutes, so I
27 am going to turn the gavel over to our vice-chair,
28 Mr. Sherwood.

REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand this 30th day of October, 2000.

Yvonne K. Fenner

Yvonne K. Fenner
Certified Shorthand Reporter
License No. 10909

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California

October 26, 2000

9:30 A.M. - PUBLIC SESSION

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Heather Halsey
Representative of the Director of the Office of Planning and Research
Member Bruce Robeck
Representative of the State Controller
Member Albert Beltrami
Public Member
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:38 a.m.

APPROVAL OF MINUTES

Item 1 September 28, 2000

Member Robeck noted that the proposed minutes incorrectly reported that he suggested a particular methodology regarding the *Photographic Record of Evidence* test claim. He requested a correction.

On the same test claim, Member Halsey stated that, contrary to the transcripts, she had voted "No".

With those two corrections, Member Steinmeier moved for adoption of the minutes. With a second by Member Sherwood, the minutes were unanimously adopted.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

TEST CLAIM

Item 2 *Animal Adoption* - 98-TC-11
County of Los Angeles, City of Lindsay, Southeast Area Animal Control Authority, and Counties of Fresno and Tulare, Co-Claimants
Civil Code Sections 1815, 1816,1834, 1834.4, 1845—1847, 2080
Food and Agriculture Code Sections 17005, 17006, 31108, 31752,

31752.5, 31753, 31754, 32001, 32003
Penal Code Sections 597.1 and 599d
Statutes of 1998, Chapter 752
Amended to add: Business and Professions Code Section 4855
Statutes of 1978, Chapter 1314
California Code of Regulations, Title 16, Section 2031 (renumbered Section 2032.3 on May 25, 2000)

Jim Apps explained that the Department of Finance's expert witness, Ms. Bryant, had been in a car accident the evening before and was therefore unable to attend today's hearing. Because of the critical nature of her testimony, he requested a continuance to the November Commission hearing.

Leonard Kaye noted that the witnesses present were assembled from around the state at great expense. Though the circumstances were unfortunate, he requested the Commission go forward with the hearing.

In response to Member Steinmeier, Mr. Apps replied that Ms. Bryant would be available for the November hearing. Member Beltrami asked if it would be possible to hear the witnesses today and then continue the item for Ms. Bryant's testimony. Member Steinmeier agreed.

Meg Halloran, Deputy Attorney General representing the DOF, asked if Ms. Bryant's additional comments could be read into the record if the hearing was to go forward.

Ms. Higashi noted that, in the past, the Commission had received testimony and deferred voting until a subsequent hearing where copies of the transcript were made available to all parties. She noted that this practice was common during the *Special Education* proceedings and could be employed here.

The Chair recognized that many witnesses had come long distances for today's hearing, but she noted her concern that, if the witnesses were heard today and the hearing was continued, both sides might be disadvantaged.

Member Steinmeier moved to hear the item, then to keep the record open for the Commission to make its decision at the November hearing. The motion carried 5-2, with Members Sherwood and Porini voting "No." Ms. Halloran asked for clarification of whether the motion allowed for Ms. Bryant to make oral testimony. The members discussed the issue and replied that the record would be left open for written comments only, but that Ms. Bryant's written testimony today could be read into the record.

Camille Shelton, Staff Counsel, introduced this item. She noted that staff recommended the Commission find a partial reimbursable state mandated program. Ms. Shelton added that a couple of procedural documents that were inadvertently omitted from the administrative record had been given to the members and parties and the record was now complete. Three late filings had also been distributed.

The parties were represented as follows: Leonard Kaye, Dennis Davis, and Bob Ballenger, with the County of Los Angeles; Pat Claerbout, with the Southeast Area Animal Control Authority; Pamela Stone, on behalf of the County of Tulare; Ramon Figueroa, with the City of Lindsay; Allan Burdick, on behalf of the County of Tulare and the City of Lindsay; Jim Apps and Meg Halloran, Attorney General, with the Department of Finance.

Ms. Higashi swore in the witnesses.

Mr. Kaye noted his agreement with staff's analysis and conclusion. He argued that the prior law required provision of a "care and comfort" standard, whereas SB 1785 imposed a new state standard including care and treatment. Mr. Kaye requested insertion of treatment into staff's language (page 35, last bullet) to read, "Providing prompt and necessary veterinary care and treatment for abandoned animals other than cats and dogs," and to add a new bullet reading, "Providing nonemergency treatment for cats and dogs."

Mr. Ballenger concurred that the duties listed in staff's analysis are reimbursable, but requested addition of the duty to provide treatment for impounded dogs and cats. He disagreed with staff's assertion that this duty was preexisting. Mr. Ballenger argued that the duty to provide treatment to save an animal's life, at least for its extended holding period, is new and therefore reimbursable.

Dr. Davis explained that the prior 72-hour care and comfort standard has been replaced with a continuing treatment standard, designed to stabilize the animal over a longer period of time. He added that communicable diseases were not routinely treated under prior law, but are now. Dr. Davis submitted that the Hayden bill, SB 1785, requires shelters treat the animal, in addition to keeping them clean and comfortable.

Ms. Claerbout explained that many professionals in her field were in agreement with the goals of SB 1785, but realistically knew the new mandated provisions would drastically increase the cost of providing animal control care in shelters throughout the state. She noted that this dramatic cost increase was the basis of opposition to the bill. Ms. Claerbout commended Ms. Shelton's analysis, but disagreed with the one staff finding regarding the duty to provide medical treatment for dogs and cats. She argued that prior law only required care and emergency treatment to relieve pain and suffering, but the Hayden bill, along with Penal Code section 597.1, created a higher level of service to provide ongoing medical treatment for every animal while it is impounded.

Ms. Stone agreed with the other co-claimants that the issue of treatment costs of animals constitutes a reimbursable activity. Further, Ms. Stone disagreed with staff that owner-relinquished animals do not impose a reimbursable state mandated activity on public pounds and shelters. She argued that relinquished animals should be considered as abandoned property and should therefore be covered within the reimbursable activities of this claim. Ms. Stone submitted that not accepting owner relinquished animals, or charging those owners a fee, highly discourages relinquishment and results in abandonment.

Lt. Figueroa outlined the cost increases experienced by Lindsay Animal Control, which he attributed to SB 1785. He argued that the following areas should be found reimbursable: the expanded holding periods impose a higher level of service, the mandated cat assessment is a costly new program and imposes a higher level of service regarding veterinary service, the 'no-treatable animal shall be euthanized' clause of SB 1785 removes discretionary judgment, and SB 1785 applies to private shelters only if they choose to accept an animal, but public shelters do not have that option.

Mr. Burdick reminded the Commission that it found the requirement for local agencies to retain stray cats for three days to be a reimbursable activity in 1981 (Statutes of 1980, Chapter 1060).

Ms. Halloran noted that Ms. Bryant had planned to address some of the issues raised by the witnesses today. She noted that Ms. Bryant's written comments might touch on those issues, but requested the transcript as soon as possible to provide Ms. Bryant with the information necessary for her rebuttal.

Ms. Halloran cited the *County of Los Angeles* case and submitted that reimbursement is constitutionally prohibited because this mandate is not peculiar to local governmental agencies; rather, it is a law of general application that also applies to private shelters. She disagreed with staff's finding that, since private shelters are not required to accept an animal, then the mandate applies only to local government. In that case, Ms. Halloran argued that, with only minor exceptions, this test claim legislation is applicable to all abandoned animals in this statute whether sheltered publicly or privately. Ms. Halloran contended that the legislative intent is explicit that the mandate applies to both public and private shelters (Exhibit A, page 163). Ms. Halloran argued that, once a private shelter accepts an animal, the mandate applies. She noted that staff's final analysis agreed with that point. Ms. Halloran noted that Civil Code section 1816, subsection (a), requires private shelters to take in animals if they are able to do so. She warned the Commission that a finding that the mandate is limited to public shelters could conceivably create a policy disaster by exempting private shelters from any of the mandates in this legislation. Ms. Halloran contended that Government Code section 17556, in subdivisions (d) and (e), and *Connell* v. *Superior Court*, prohibit the Commission from finding a reimbursable state mandate because the legislation authorizes local governments to impose fees to offset their costs.

Kate Neiswender of Senator Tom Hayden's staff read Ms. Bryant's comments into the record. Ms. Bryant argued that shelters already had the duty to provide necessary and prompt veterinary care and noted their reciprocal right to collect their reasonable expenses from the owner. Ms. Bryant's letter addressed the provisions associated with private individuals and then the provisions dealing specifically with shelters. She said that her investigation showed that private agencies account for much of the sheltering and argued that many types of private shelters are legally obligated to take in strays and to follow the mandated requirements. She agreed that private agencies have discretion over which owner-relinquished pets to accept, but argued that public shelters are not legally required to take owner-relinquished pets at all. Ms. Bryant contended that private shelters do not pick and choose among stray animals for marketability. She contended that the test claimants and affected entities do not realize that the requirements in the test claim legislation were in preexisting law. She argued that this misunderstanding was probably because the legal obligations were scattered in different codes. Ms. Bryant explained that Chapter 752 is the reiteration of the preexisting requirements so the shelter manager can more easily access them. She argued that the test claim legislation did not raise the standard of veterinary care. Ms. Bryant submitted that the legislation would pay for itself because of the double effect of saving the costs of killing and disposal and bringing in income from fees and fines. She contended that, given that double effect, it only takes a small percentage drop in killing for the legislation to pay for itself.

Ms. Bryant argued that most public shelters are not operating efficiently. She contended that one reason was because public shelters that reduce killings and experience cost savings would just get its budget cut accordingly. She added that another reason was due to the lack of informed oversight by a state agency or local government. Ms. Bryant submitted that the public cannot serve as a corrective mechanism because they would not know the animal they

were looking for had been killed. She contended that, since there was no legal or financial pressure to operate efficiently to save money, legislation was the only available mechanism to deal with this problem of inefficiency and resultant costs.

Ms. Neiswender noted that there might be minor differences between the draft of Ms. Bryant's letter and the copy of the letter distributed by the Department of Finance because she received her copy by e-mail the day before and understood that Ms. Bryant had made some other changes.

Member Steinmeier asked staff if this law is a general application law or if it only affects local government. Ms. Shelton replied that existing law requires private shelters to take charge of these animals *if* they are able to, which leaves them some discretion that local agencies do not have.

Member Beltrami asked if Los Angeles County's shelter impound rates had fallen since this law was passed. Mr. Ballenger replied that impound rates for dogs has risen since the legislation was enacted. Member Beltrami noted that result was not consistent with Ms. Bryant's comments. Mr. Kaye added that a late filing submitted by the City of Berkeley stated that their costs have increased. He further contended that, after 450 letters were sent out to ascertain the results of the Hayden Bill, only one response of 12 received alleged that it lowered the kill rate, increased the adoption rate, and saved money. The Chair noted the disadvantage of not having the witness to testify.

Member Beltrami asked if the County of Los Angeles had raised fees since the legislation was passed. Mr. Ballenger replied that they had not yet been raised. Mr. Kaye added that he thought the City of Los Angeles had raised the dog-licensing fee. Member Beltrami asked if they have had to add space because of this legislation. Mr. Kaye stated his belief that they had. Member Beltrami asked if fees normally fund capital improvements. Mr. Kaye was not sure.

Ms. Halloran replied that, in *Connell* v. *Superior Court*, the court ruled that the authority to levy fees, whether exercised or not, prohibits the costs from being deemed state mandated. Mr. Apps added that the Commission had found before, regarding business fees, that the ability to raise fees, even if not exercised, precluded reimbursement. Mr. Kaye argued that, in the *SIDS* case, the second appellate court found that, unless the county could realistically recover its costs from the fee authority, even if explicitly provided, it is unrealistic and the county cannot use it. Ms. Stone agreed with Mr. Kaye and submitted that they cannot increase their fees more than what the public is willing to pay.

Ms. Shelton agreed with the *Connell* case, and noted that staff found the fee authority is sufficient to cover the costs when the animal is redeemed or relinquished by the owner or is adopted. She noted that there are no statutes providing fee authority for those animals that are euthanized. Member Robeck asked what fee is charged for picking up a stray and abandoned animal. Ms. Shelton replied that there is nothing required by statute, and assumed it was left to the discretion of the local agency. Member Robeck noted that there was no party to charge a fee to. Ms. Halloran, citing *Connell*, argued that the issue was that local agencies have the authority to raise fees that could offset the costs, whether or not they chose to.

Ms. Shelton noted that staff's analysis provides a list of other statutes, preexisting law, which staff recommended identification of in Parameters and Guidelines, if approved, as offsets. She

noted that these statues give fee authority, but that there are conditions placed on that authority.

Member Robeck asked staff and then witnesses to comment on the how the holding requirements in SB 1785 are different than prior law. He referred specifically to the three-day period and when that commences and ends versus a four-day period after picking up a stray. Secondly, Member Robeck asked if the real standard is six days unless certain additional expenses are incurred or whether the standard is four days as recommended by staff.

Ms. Shelton replied that the prior law required impounded dogs and cats to be held for three days, which was measured from the day of capture. The test claim legislation required impounded dogs and cats to be held for six business days. Staff found that, at the discretion of the local agency, they could reduce it to four days if they comply with two conditions—to make the animal available for owner redemption one weekday evening or to make an appointment with the owner to look at the impounded animals. Ms. Shelton explained staff's position that the six-business-day period was discretionary because agencies had the option to reduce it to four days. Staff therefore recommended a four-day required holding period and reimbursement for complying with the additional activities to reduce the holding time. Ms. Shelton submitted that the difference in increased holding period would be measured by calculating the difference between three days from the day of capture and the four business days from the day after impoundment. She added that those are the express provisions in the statute.

Member Robeck commented that the six day holding period, opening on weekend or evening hours, or opening hours beyond normal business hours, represents different options, but not a series of mandated choices. Ms. Shelton noted that that position differed from staff's, but nothing prevented the Commission from going in that direction.

Mr. Kaye agreed with Member Robeck's interpretation, but noted that he did not protest vehemently because he believed most animal shelters would qualify under staff's interpretation. Lt. Figueroa explained that his shelter initially tried to comply with the additional activities, but due to the hardship and cost factors it now holds animals for six days.

Member Sherwood agreed with staff's position on the holding periods. He questioned the legal obligations of private shelters, whether all private shelters had to take in stray animals and whether those that do so have made an optional decision to become nonprofit and therefore are under the law of this statute.

Ms. Halloran replied that some private shelters, due to contracts or other provisions, are required to take in strays. She repeated her argument that the subject mandates are not exclusive to local government agencies because privates are obligated to comply with the same mandates once they take in the animal. Member Sherwood replied that public sectors do not have an option to get out from underneath the statute. Ms. Halloran said she believed that there are certain circumstances where even public shelters are not required to take in animals. Mr. Kaye replied that cities and counties can contract their duties, but cannot get out of it. He contrasted that option with the option available to private nonprofits, which have the ability to change the scope of their services. Ms. Halloran argued that those provisions only apply to strays.

Member Robeck noted the SB 1785 discussion and subsequent legislative debate. He commented that many of the local private shelters, both profit and nonprofit, notified their city

clients that they were getting out of the business of taking nonadoptable animals. He added that the City of San Francisco continues to euthanize animals, but noted that the nonprofit could refuse to do so. He concluded that it is a fact that private shelters do have the right to refuse to take nonadoptable animals and that they have rescinded and aggregated their contracts, which has created a huge crisis.

Ms. Halloran argued that, once a private shelter takes in any animals, these mandates apply, and that universal application prohibits reimbursement. Mr. Kaye argued that, unlike local government, private shelters do not have to be in the business. He submitted that local governments have the sole and exclusive jurisdiction in regard to animal care and control in this state. Mr. Kaye agreed with Member Robeck's comments. Member Beltrami also agreed, and noted that his daughter works for the Sonoma [City] community facility, which has given such notice to the City. He said that it is creating problems in that city and that the private side does have flexibility that the public side does not have. [Member Beltrami noted at the November 30, 2000 hearing he was actually referring to a *city* facility and not a *county* facility.]

Member Steinmeier asked Mr. Ballenger if adoptions and redemptions have risen. Mr. Ballenger said yes, because they had lowered fees. Member Steinmeier noted that the animals were also being held longer. She recognized that there had been at least some net effect that was intended by the law. Member Steinmeier asked if they needed less space. Mr. Ballenger said that his agency had reduced the number of animals euthanized and that cat impounds have dropped steadily for four years but dog impounds have risen steadily.

[A brief recess was taken.]

Chairperson Porini called for public comment, and cautioned the witnesses to comment only on the issues before the Commission.

Richard Ward, Administrative Director for the State Humane Association of California

Mr. Ward submitted that private shelters have choices to not contract, to not accept animals, or to become no-kill shelters. He noted that, although euthanasias are decreasing and adoptions are increasing, the population of the state, and subsequent number of pet owners, is also increasing so the problems are still growing and the shelters need more space. Mr. Ward contended that it is unreasonable to enact legislation to increase service levels without providing the necessary funding to ensure total compliance and success. He argued that those costs couldn't be recouped by increasing fees because that simply increases the number of animals that are not redeemed.

Dolores Keyes, General Manager of Coastal Animal Services Authority, Orange County

Ms. Keyes' agency does not accept relinquished animals, but accepts stray and abandoned animals. She testified that, since the Hayden bill was passed, her shelter's medical bills have increased by 22 percent from fiscal year 1998-99 to 1999-00. In the first quarter of the current fiscal year, they have spent 50 percent of last year's spending, with nearly the same number of animals. She submitted that participating veterinarians have complained of being overwhelmed and overloaded. Ms. Keyes argued that the legislation has created a fiscal impact that includes higher vet costs, higher staffing costs, and new in-house services.

Greg Foss, Animal Control Director, County of Mendocino

Mr. Foss asked the Commission to consider the possibility that the fees collected, such as dog license fees, may already be absorbed in the county, city, or humane society's budget for other purposes.

Lois Newman, Founder and President of the Cat and Dog Rescue Association of California

Ms. Newman submitted that there are more private shelters than public shelters in California. She noted that, if their mission statements say they take in strays as well as owner-surrenders, they legally must do so unless they are out of space. Ms. Newman submitted that private shelters equal the pubic shelters and must follow the Chapter 752 statutes and therefore the reimbursement does not apply. Ms. Newman also argued that record keeping was required by law before Chapter 752 was enacted and before 1973 and should not be a state mandate. She further submitted that public shelters are failing to use statutory authority to apply the cost of treatment and general care of animals in their shelter. If the fees do not offset the cost, she submitted that such fiscal irresponsibility should not be reimbursed. Ms. Newman added that no law requires a shelter to take in owner-surrendered animals and therefore required the Commission to find that Chapter 752 does not constitute a state mandate.

Patricia Wilcox, California Animal Control Directors Association, County of Sacramento

Ms. Wilcox submitted that, due to the new law, animals that were previously cared for and comforted are now provided with veterinary care at significantly higher costs. She alleged that it is not reasonable to recover these costs with dog license fees and that people are not willing to pay more.

Kate Neiswender, Senator Tom Hayden's Office

Ms. Neiswender argued that this measure was designed to increase adoptions and reduce killings. She submitted that this law has to be viewed as a whole because, even if longer holding periods cost money, if all pieces are implemented there is a net effect of no new costs. Ms. Neiswender argued that some shelters are being fiscally irresponsible. She noted that some shelters provide gratis euthanasias, some fail to scan for microchips and therefore lose possible impound recovery fees, some fail to use unclaimed spay/neuter deposits for community outreach on spay and neuter issues, and others refuse to release animals to rescue organizations. Ms. Neiswender contended that the law only works if all pieces are implemented, but the test claimants have not fully implemented the law. She submitted that the claim is invalid for that reason alone and asked the Commission to deny it.

Dr. Dena Mangiamele, Director of the San Diego County Department of Animal Control

Dr. Mangiamele argued that, despite the number of private shelters, they do not impound nearly as many animals as public shelters. She noted that the reasons many owner-relinquished animals are signed over for euthanasia, or animals not turned over to rescues, are because of serious behavior or health problems. Dr. Mangiamele agreed with staff's recommendations. However, she asked the Commission to adopt the alternative staff recommendation in footnote 42 and to reimburse local agencies for the increased costs to care for and maintain impounded animals and provide veterinary treatment of impounded animals other than injured cats and dogs for those animals ultimately attempted and released to a new owner or nonprofit adoption organization because adoption fees cannot realistically cover those costs. She also requested the Commission recognize Food and Agriculture section 31754 relating to owner-relinquished

animals. It imposes a reimbursable state-mandated duty because public shelters cannot turn those animals away and cannot charge fees to cover the subsequent costs without amounting to a prohibitive level that would instead promote animal neglect and abandonment.
Dr. Mangiamele asked the Commission to give equal privileges to those testifying today as to those given to Ms. Bryant, who will have the opportunity to review testimony before developing a response.

John Humphrey, San Diego Animal Control

In addition to Dr. Mangiamele's comments, Mr. Humphrey asked the Commission: 1) to amend staff's final bulleted recommendation to insert the word "injured" when describing the class of cats and dogs for which veterinary care is not reimbursable; 2) to find reimbursement for local agencies providing care and treatment during the required 14-day holding period for animals lawfully seized pursuant to Penal Code section 597.1, subdivision (f) or (g), in cases where permitted charges are not paid by the owner or ordered by a court; and, 3) to find reimbursement for post seizure hearings required by Penal Code section 597.1, subdivision (f), in cases where the seizure was justified and for the preseizure hearings required by Penal Code section 597.1, subdivision (g), even in cases where an owner redeems an animal lawfully impounded under this section and/or is convicted of violation. The cost recovery provisions of subdivision (h) and (d) extend only to costs of seizure and care of the animals, or for costs incurred in housing, care, feeding, and treatment of the seized or impounded animal.

Virginia Handley, The Fund for Animals

Ms. Handley submitted that, in her survey regarding this legislation, she found that euthanasia has increased and adoptions have decreased. She argued that the reason is because shelters run out of space and must kill adoptable animals to comply with the holding requirements for other animals that are less adoptable. Ms. Handley further argued that it was counter-productive to turn away owner-relinquished animals because otherwise the animals are abandoned and then must be held for days as strays, without opportunity for adoption. Ms. Handley submitted that rescue groups or humane societies would not take in stray animals without a contract.

Mike Ross, Animal Services Director for Contra Costa County

Mr. Ross agreed with the comments of the City of Los Angeles and Counties of Los Angeles and San Diego in support of staff's recommendations in general, though he requested a finding of reimbursement for veterinary expense. Mr. Ross argued that increasing fees to cover those costs would decrease redemptions and licensing.

Teri Barnato, Association of Veterinarians for Animal Rights

Ms. Barnato argued that shelters should look at better ways to reduce the amount of money they are sending to veterinarians outside of their own shelter and bring the care inside.

Howard Davies, Assistant Sheriff, Mariposa County

Mr. Davies said his county is attempting to build its own facility. He argued that, to comply with the bill, his true costs would increase from $87,000 a year, which covered impound costs under the old contract and two animal control officers, to approximately $145,000 a year, and they will have to increase staffing to man the new facility. Mr. Davies added that a four-day hold can actually end up being as many as seven days, depending on the day the animal is impounded and the shelter's schedule.

Hearing no further questions from the Members, the Chair closed the item and noted that it would be brought back for vote only at the Commission's next hearing. Chairperson Porini thanked the witnesses.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526.

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino* v. *State of California, et al.*, Case Number SCV52190, in the Superior Court of the State of California, County of Los Angeles.
2. *County of Sonoma* v. *Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.
3. *San Diego Unified School District* v. *Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
4. *Long Beach Unified School District* v. *Commission on State Mandates,* Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District* v. *Commission on State Mandates, et al,* Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
6. *State of California, Department of Finance* v. *Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara,* Case Number 00CS00866, in the Superior Court of the State of California, County of Sacramento.
7. *City of El Monte et al.* v. *Commission on State Mandates*, Petition for Review pending in the Supreme Court [Case Number 3 Civil C025631, in the Appellate Court of California, Third Appellate District. (Sacramento County No. 95CS02704)].
8. *City of San Diego* v. *Commission on State Mandates, et al.* Case Number GIC 751187, in the Superior Court of the State of California, County of San Diego.
9. *County of Los Angeles* v. *Commission on State Mandates, et al.* Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
10. *County of San Bernardino* v. *Commission on State Mandates, et al.* Case Number, in the Superior Court of the State of California, County of San Bernardino.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd.(e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from Personnel Sub-Committee.

Chairperson Porini announced that the Commission would be meeting in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive legal advice from Legal Counsel for consideration and action as necessary and appropriate upon pending litigation listed on the published notice and agenda and Government Code section 11126, subdivision (a), and 17526 to confer on personnel matters listed on the public agenda.

[Lunch Break]

REPORT FROM CLOSED EXECUTIVE SESSION

Open session reconvened at 1:00 p.m. Chairperson Porini reported that the Commission had met in closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive legal advice from Legal Counsel for consideration and action as necessary and appropriate upon pending litigation listed on the published notice and agenda and Government Code section 11126, subdivision (a), and 17526 to confer on personnel matters listed on the public agenda.

PROPOSED CONSENT CALENDAR

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 3 *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services* - 97-TC-05
County of Los Angeles, Claimant
Government Code Section 7576
Statutes of 1984, Chapter 1747, Statutes of 1985, Chapter 1274, Statutes of 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1
California Department of Mental Health Information Notice No: 86-29

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATES

Item 6 *Annual Parent Notification - Staff Development* - 97-TC-24
Education Code Section 48980, subdivisions (c) and (h)
Statutes of 1997, Chapter 929

ADOPTION OF REGULATIONS PURSUANT TO GOVERNMENT CODE SECTION 17257, SUBDIVISION (g).

Item 7 Adoption of Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5, Amending Section 1188.4 of Chapter 2.5 of Division 2, Title 2 of the California Code of Regulations - (AB 1679), As Modified on September 28, 2000, After Close of Public Comment Period.

Item 8 Approval of Modifications to Proposed Amendments to California Code of Regulations, Title 2, Chapter 2.5 - Applications for Findings of Significant Financial Distress. Articles 1 and 6.5, Amending Sections 1181.2, 1181.3, 1186.5, 1186.51. 1186.52, and 1186.72; Renumbering and Amending Sections 1186.6, 1186.61, and 1186.62; and Adding New Sections 1186.6, 1186.61, and 1186.62, After Close of Public Comment Period.

PROPOSED STATEMENTS OF DECISION - TEST CLAIMS

Item 11 *Photographic Record of Evidence* - 98-TC-07
City of Los Angeles, Claimant
Penal Code Section 1417.3
Statutes of 1985, Chapter 875; Statutes of 1986, Chapter 734; Statutes of 1990, Chapter 382

Item 12 *Law Enforcement Racial and Cultural Diversity Training* -97-TC-06
County of Los Angeles, Claimant
Penal Code Section 13519.4
Statutes of 1992, Chapter 1267

Item 13 *Health Benefits for Survivors of Peace Officers and Firefighters* 97-TC-25
City of Palos Verdes Estates, Claimant
Labor Code Section 4856, Subdivisions (a) and (b)
Statutes of 1996, Chapter 1120; Statutes of 1997, Chapter 193

Item 14 *Budget Process Financial Statements, and County Oversight* - 97-TC-19
Alameda County Office of Education, Claimant
Education Code Sections 1241.5, 17150/17850, 33127, 33128, 33129, 33132, 35035, 42100, 42101, 42103, 42122, 42123, 42124, 42125, 42126, 42127, 42127.1, 42127.2, 42127.3, 42127.4, 42127.5, 42127.6, 42127.9, 42128, 42129, 42130, 42131, 42133, 42140, 42141, 42142, and 42637 and Government Code Section 3540.2
Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 36; Statutes of 1979, Chapters 221 and 282; Statutes of 1980, Chapter 1354; Statutes of 1981, Chapters 100 and 1093; Statutes of 1984, Chapter 134; Statutes of 1985, Chapters 185 and 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917, 1025 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 525; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 237, 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525 and 530; Statutes of 1996, Chapters 227, 1071 and 1158
California Code of Regulations, Title 5, Sections 15440-15466

Item 15 *County Office Budget Process and Financial Statements* - 97-TC-20
Alameda County Office of Education, Claimant
Education Code Sections 1040, 1240, 1240.2, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1628, 1630, 14050, 33127, 33128, 33129, 33132, 42120, 42129, and 42133
Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 843; Statutes of 1979, Chapters 10 and 221; Statutes of 1983, Chapter 1276; Statutes of 1985, Chapter 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 1372; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525
California Code of Regulations, Title 5, Sections 15467-15493

PROPOSED STATEMENTS OF DECISION: DISMISSAL OF WITHDRAWN TEST CLAIM PROVISIONS

Item 16 *Academic Assessments*
San Diego Unified School District, Claimant
Dismissal of Education Code Sections 60605 and 60607, Subdivisions (b) - (e), Statutes of 1997, Chapter 828 (Severed from 97-TC-23)

Item 17 *Budget Process Financial Statements, and County Oversight*
Alameda County Office of Education, Claimant
Dismissal of California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08 (Severed from 97-TC-19)

Item 18 *County Office Budget Process and Financial Statements*
Alameda County Office of Education, Claimant
Dismissal of California Department of Education Fiscal Management Advisories 86-02, 86-03, 87-01, 88-01, 88-10, 92-03 and Management Advisories 92-06, 92-07, 92-08, 93-02, 94-01, 94-02, 94-07, 95-03, 95-04, 95-07, 96-08 (Severed from 97-TC-20)

PROPOSED STATEMENTS OF DECISION: DISMISSAL OF INCORRECT REDUCTION CLAIM

Item 19 *Incorrect Reduction Claim: Local Coastal Programs*
City of Sand City, Claimant
Public Resources Code Section 30000 et seq.,
Statutes of 1976, Chapter 1330

The consent calendar consisted of Items 3, 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19. Upon motion by Member Beltrami and second by Member Halsey, the consent calendar was adopted unanimously. Ms. Higashi noted that Items 4, 5, and 10 were postponed.

Chairperson Porini temporarily left the room. Member Sherwood assumed the role of Chair.

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 4 *School Site Councils and Brown Act Reform*– CSM 4501
Kern Union High School District, San Diego Unified School District, and County of Santa Clara, Co-Claimants
Education Code Section 35147
Government Code Section 54952
Statutes of 1993, Chapter 1138
Statutes of 1994, Chapter 239

This item was postponed.

ADOPTION OF PROPOSED AMENDMENTS TO PARAMETERS AND GUIDELINES

Item 5 *Open Meetings Act* – 98-PGA-08
County of Los Angeles, Requester
Statutes of 1986, Chapter 641

This item was postponed.

INCORRECT REDUCTION CLAIM

Item 10 *Collective Bargaining* - CSM 99-4425-I-04
West Valley-Mission Community College District, Claimant
Statutes of 1975, Chapter 961

This item was postponed.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

TEST CLAIMS

Item 9 *Emergency Apportionments* - 97-TC-14
Alameda County Office of Education, Claimant
Education Code Sections 41320, 41320.1, 41320.2, 41320. 3, 41321, 41322, 41323, 41325, 41326, 41326.1, 41327, 41328
Statutes of 1981, Chapter 70; Statutes of 1987, Chapter 990; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 171; Statutes of 1991, Chapter 1213; Statutes of 1993, Chapters 589 and 924; Statutes of 1994, Chapter 1004; Statutes of 1995, Chapters 50 and 525

Sean Avalos, Staff Counsel, introduced this item. He noted the following staff findings: 1) the test claim legislation does not impose a reimbursable state mandated program on school districts; 2) the Commission is precluded from finding costs mandated by the state since the county superintendent is reimbursed for its role in the emergency apportionment process by the requesting school district; and 3) in accordance with the *County of Los Angeles* and the *City of San Jose*, the test claim legislation does not constitute a reimbursable state mandated program.

Staff therefore recommended the Commission deny the test claim.

Parties were represented as follows: Keith Petersen, representing the Alameda County Office of Education; and Dan Stone, Attorney General, and Lynn Podesto, representing the Department of Finance.

Paula Higashi swore in the witnesses.

Mr. Petersen disagreed with staff that it is discretionary when a school district in significant financial distress seeks an extraordinary loan. He argued that a district in that situation has no other option. Mr. Petersen submitted that, even if the Commission found it to be discretionary, the fiscal advisory and oversight duties compelled upon the county office by the legislation are not discretionary—if the district asks for a loan, the county office must perform those activities. Mr. Petersen further disagreed with staff's citation of the *City of San Jose* case because, in this case, school districts are not permitted to charge districts a fee for their services.

Mr. Stone agreed with staff's recommendation. He cited to a recent Court of Appeal decision, *City of El Monte* (83 Cal App 4th 266) and argued that it repeated and adopted the *City of San Jose* theory as to the shifting of costs between local agencies not being a reimbursable state mandate. He added that this was in the context in which the state had dictated the shift, which is the circumstance in the subject claim. Mr. Stone submitted that, according to this appellate district, the *City of San Jose* applies. Mr. Petersen and the members expressed their interest in reviewing a copy of the case.

Member Lazar therefore moved to continue the issue. Member Steinmeier seconded the motion. The motion carried 4-2, with Members Halsey and Beltrami voting "No."

Member Robeck asked staff to take into account the funds provided through Financial Crisis Management Team (FCMAT) that county offices can claim for extraordinary services to school districts.

COMMISSION ON STATE MANDATES ROLE IN LEGISLATIVE PROCESS

Item 20 Staff Report (information and possible action)

Member Robeck noted his understanding that, in the past, staff has provided information on legislative proposals but has not provided a proactive position on legislation affecting the Commission. He understood that any lobbying that had been done was on an individual member basis and not on a collective basis. Mr. Robeck noted that, given the composition of the Commission, it would be very difficult to engage in significant lobbying without running the risk of individual members having to take contrary positions to that of the Commission. Further, he questioned whether the Commission could as a unit come to a unanimous position and, if so, how much weight it would carry. He added that the Commission has a small staff with a significant workload. Member Robeck submitted that the Commission should not attempt to engage in issue position taking or legislation or engage in active lobbying as a group.

Member Sherwood noted his agreement with Member Robeck's statement. Member Steinmeier also agreed and submitted that she did not believe it would be effective and would be counterproductive to the operation of the Commission.

Member Beltrami agreed with the other members' comments, but did not want to tie the Commission's hands if an issue were to come up next year. Member Steinmeier agreed.

Member Sherwood also agreed and added that the Commission was not taking a direct action to get involved today, but would not be precluded from future action.

EXECUTIVE DIRECTOR'S REPORT

Item 21 Workload, Legislation, Next Hearing, etc. (information)

Paula Higashi noted that her report included an itemization of workload data and copies of chaptered legislation and veto messages on other bills. She mentioned the option of combining the November 30 and December 1 hearings into one long hearing day as opposed to two short days. The members generally agreed that one-day was preferable, but were concerned about the Commission's statutory duty to meet once a month. Ms. Higashi commented that the Commission did not meet in December last year and that there was no penalty for non-compliance. Member Sherwood noted that no one at the hearing had noted objection, but that someone not present might still object.

PUBLIC COMMENT

No one responded to Member Sherwood's call for public comment.

Ms. Higashi introduced Ellen Fishman, the Commission's new half-time Staff Counsel. She also announced the retirement of Jeff Yee from the State Controller's Office. Member Sherwood presented Mr. Yee with a resolution for his 27 years of state service, particularly for his work with the Commission on State Mandates.

ADJOURNMENT

Member Sherwood handed the gavel back to Chairperson Porini upon her return. Hearing no further comment, the Chair adjourned the meeting at 1:48 p.m.

Paula Higashi

PAULA HIGASHI
Executive Director

STATE OF CALIFORNIA GRAY DAVIS, *Governor*

COMMISSION ON STATE MANDATES
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October 31, 2000

Mr. James A. Cunningham
Legislative Mandate Specialist
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92130

State Agencies and Interested Parties (See attached mailing list)

RE: **Dismissal of Education Code Sections 60605 and 60607, subdivisions (b)-(e) from:**
Test Claim: *Standardized Testing and Reporting*
(formerly *Academic Assessments*) 97-TC-23
San Diego Unified School District
Education Code Sections 60607, subdivision (a), 60609, 60615,60630, 60640, 60641, and 60643
Statutes of 1997, Chapter 828
Title 5, California Code of Regulations, Sections 850-874

Dear Mr. Cunningham:

The Commission on State Mandates adopted the attached Statement of Decision on October 26, 2000. This decision is effective on October 31, 2000.

Please contact Shirley Opie at (916) 323-3562 if you have any questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure: Adopted Statement of Decision

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE DISMISSAL OF PORTIONS OF TEST CLAIM: Education Code Sections 60605 and 60607, Subdivisions (b)-(e), as amended by Statutes of 1997, Chapter 828; Filed on March 23, 1998 By the San Diego Unified School District, Claimant.	No. 97-TC-23 *Academic Assessments* 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 on October 26, 2000)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on October 31, 2000.

Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE DISMISSAL OF PORTIONS OF TEST CLAIM: Education Code Sections 60605 and 60607, Subdivisions (b)-(e), as amended by Statutes of 1997, Chapter 828; Filed on March 23, 1998 By the San Diego Unified School District, Claimant.	No. 97-TC-23 *Academic Assessments* 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 on October 26, 2000)*

STATEMENT OF DECISION

On March 23, 1998, the San Diego Unified School District filed a test claim, 97-TC-23, alleging that Statutes of 1997, Chapter 828, imposed a reimbursable state mandated program upon school districts. Specifically, the claimant contended that, under the test claim legislation, school districts must administer achievement testing through two separate programs - the Academic Skills Assessment Program and the Standardized Testing and Reporting (STAR) Program.

On June 14, 2000, the claimant submitted a motion to sever and withdraw Education Code sections 60605 and 60607, subdivisions (b)-(e) from test claim, 97-TC-23. These sections relate to the Academic Skills Assessment Program, which, by statute, is to be implemented in accordance with regulations to be adopted by the Department of Education.

CONCLUSION

IT IS HEREBY ORDERED that Education Code sections 60605 and 60607, subdivisions (b)-(e), as added by Statutes of 1992, Chapter 722, are dismissed from test claim, 97-TC-23.

The claimant, or another school district may file a new test claim on the above-referenced matter. However, such claim shall be subject to a new filing date and reimbursement period.

Commission on State Mandates

List Date: 04/10/1998 **Mailing Information**

Mailing List

Claim Number 97-TC-23 **Claimant** Claim of San Diego Unified School District

Subject Chapter 828, Statutes of 1997

Issue Academic Assessments

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Subject Chapter 828, Statutes of 1997

Issue Academic Assessments

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bject Chapter 828, Statutes of 1997

Issue Academic Assessments

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Claim Number 97-TC-23 **Claimant** Claim of San Diego Unified School District

Subject Chapter 828, Statutes of 1997

Issue Academic Assessments

Jim Spano,
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State Controller's Office
Division of Accounting & Reporting
3301 C Street Suite 500 *Tel:* (916) 445-8756
Sacramento CA 95816 *FAX:* (916) 323-4807

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

October 31, 2000, I served the:

Dismissal of Education Code Sections 60605 and 60607, subdivisions (b)-(e) from:
Test Claim: *Standardized Testing and Reporting*
(formerly *Academic Assessments*) 97-TC-23
San Diego Unified School District
Education Code Sections 60607, subdivision (a), 60609, 60615,60630, 60640, 60641, and 60643
Statutes of 1997, Chapter 828
Title 5, California Code of Regulations, Sections 850-874

by placing a true copy thereof in an envelope addressed to:

Mr. James A. Cunningham
Legislative Mandate Specialist
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92130

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 31, 2000, at Sacramento, California

Victoria Soriano

Victoria Soriano

COMMISSION ON STATE MANDATES

NOTICE AND AGENDA [1]
State Capitol, Room 126
Sacramento, California

October 25, 2001

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 October 18, 2001

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 2-6.

A. TEST CLAIMS

Item 2 *Annual Parent Notification 1998 and 1999 Statutes,* 99-TC-09; 00-TC-12
Education Code Sections 48980 and 49063
San Juan Unified School District and San Jose Unified School District, Claimants
Statutes of 1998, Chapters 846 and 1031
Statutes of 1999-2000, First Extraordinary Session, Chapter 1

Item 3 *Eastview Optional Attendance Area,* CSM 99-TC-01
Palos Verdes Peninsula Unified School District, Claimant
Statutes of 1998, Chapter 868

[1] http://www.csm.ca.gov

B. ADOPTION OF PROPOSED STATEMENT OF DECISION ON UNDISPUTED TEST CLAIM

Item 4 *Presidential Primaries 2000,* 99-TC-04
County of Tuolumne, Claimant
Elections Code Sections 15151 and 15375
Statutes of 1999, Chapter 18

C. ADOPTION OF PROPOSED STATEMENTS OF DECISION TO DISMISS WITHDRAWN TEST CLAIMS

Item 5 *Special Education: Preschool Transportation Programs For Ages 3-5 Not Requiring Intensive Services* - CSM 3986
North Region SELPA (Alameda Unified School District, Administrative Unit), Claimant
Education Code Sections 56441.14 and 56448
Statutes of 1987, Chapter 311; Statutes of 1990, Chapter 184
Statutes of 1992, Chapter 1061

Item 6 *Special Education for Ages 3, 4, 5, and 18, 19, 20, and 21* – CSM 3986
Long Beach Unified School District, Claimant
Education Code Section 56026, as added and amended by Statutes of 1980, Chapter 797 and 1353; Statutes of 1987, Chapter 311; Statutes of 1988, Chapter 35; Statutes of 1991, Chapter 223; Statutes of 1992, Chapters 1360 and 1361; Statutes of 1993, Chapter 1296; Statutes of 1995, Chapter 530

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 7 *Standardized Testing and Reporting,* 97-TC-23
San Diego Unified School District, Claimant
Education Code Sections 60607, et al
Statutes of 1997, Chapter 828
Title 5, California Code of Regulations,
Sections 850-874

B. ADOPTION OF AMENDMENT TO PARAMETERS AND GUIDELINES

Item 8 *Mandate Reimbursement Process* - CSM-4485
Statutes of 1975, Chapter 486; Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995); Statutes of 1996, Chapter 162 (Budget Act of 1996); Statutes of 1997, Chapter 282 (Budget Act of 1997); Statutes of 1998, Chapter 324 (Budget Act of 1998); Statutes of 1999, Chapter 50 (Budget Act of 1999); Statutes of 2000, Chapter 52 (Budget Act of 2000); Statutes of 2001, Chapter 106 (Budget Act of 2001)

VI. EXECUTIVE DIRECTOR'S REPORT (info)

Item 9 Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.,* Case Number B140704 in the Appellate Court of California, Second Appellate District, Division 2.
2. *San Diego Unified School District v. Commission on State Mandates, et al.,* Case Number D0 38027, in the Appellate Court of California, Fourth Appellate District, Division 1.
3. *Department of Finance v. Commission on State Mandates, et al.*, Case Number 00CS01446, in the Superior Court of the State of California, County of Sacramento.
4. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al,* Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.
5. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara,* Case Number C037645, in the Court of Appeal, Third Appellate District.
6. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
7. *County of Los Angeles v. Commission on State Mandates, et al.,* Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
8. *County of San Bernardino v. Commission on State Mandates, et al.,* Case Number BS06911, in the Superior Court of the State of California, County of Los Angeles.
9. *County of San Bernardino v Commission on State Mandates of the State of California et al.*, Case Number SCVSS72444, in the Superior Court of the State of California, County of San Bernardino.
10. *County of San Diego v. Commission on State Mandates, et al.,* Case Number GIC762953, in the Superior Court of the State of California, County of San Diego.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee.

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

For information, contact Paula Higashi, Executive Director, at (916) 323-3562.

COMMISSION ON STATE MANDATES

October 25, 2001

PROPOSED CONSENT CALENDAR (action)

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

ADOPTION OF PROPOSED STATEMENTS OF DECISION TO DISMISS WITHDRAWN TEST CLAIMS

Item 5 *Special Education: Preschool Transportation Programs For Ages 3-5 Not Requiring Intensive Services* - CSM 3986
North Region SELPA (Alameda Unified School District, Administrative Unit), Claimant
Education Code Sections 56441.14 and 56448
Statutes of 1987, Chapter 311; Statutes of 1990, Chapter 184
Statutes of 1992, Chapter 1061

Item 6 *Special Education for Ages 3, 4, 5, and 18, 19, 20, and 21* – CSM 3986
Long Beach Unified School District, Claimant
Education Code Section 56026, as added and amended by Statutes of 1980, Chapter 797 and 1353; Statutes of 1987, Chapter 311; Statutes of 1988, Chapter 35; Statutes of 1991, Chapter 223; Statutes of 1992, Chapters 1360 and 1361; Statutes of 1993, Chapter 1296; Statutes of 1995, Chapter 530

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

ADOPTION OF AMENDMENT TO PARAMETERS AND GUIDELINES

Item 8 *Mandate Reimbursement Process* - CSM-4485
Statutes of 1975, Chapter 486; Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995); Statutes of 1996, Chapter 162 (Budget Act of 1996); Statutes of 1997, Chapter 282 (Budget Act of 1997); Statutes of 1998, Chapter 324 (Budget Act of 1998); Statutes of 1999, Chapter 50 (Budget Act of 1999); Statutes of 2000, Chapter 52 (Budget Act of 2000); Statutes of 2001, Chapter 106 (Budget Act of 2001)

POSTPONED

Item 3 *Eastview Optional Attendance Area*, CSM 99-TC-01
Palos Verdes Peninsula Unified School District, Claimant
Statutes of 1998, Chapter 868

Item 7 *Standardized Testing and Reporting*, 97-TC-23
San Diego Unified School District, Claimant
Education Code Sections 60607, et al
Statutes of 1997, Chapter 828
Title 5, California Code of Regulations,
Sections 850-874

Hearing Date: October 25, 2001
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ITEM 7

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643
Statutes of 1997, Chapter 828

Title 5, California Code of Regulations, Sections 850-874

Standardized Testing and Reporting

Executive Summary

Summary of the Mandate

Statutes of 1997, Chapter 828, among other things, amended Education Code sections 60607, 60609, 60615, and 60630 and added Education Code sections 60640, 60641 and 60643. Statutes of 1997, chapter 828, and the implementing regulations at title 5, California Code of Regulations, Sections 850-874, established the Standardized Testing and Reporting (STAR) Program related to achievement testing that school districts must administer to pupils in the state. The STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education. School districts administer the test in English (commonly called the "SAT-9" test) to all pupils enrolled in grades 2 through 11 and administer an additional test (commonly called the "Sabe/2" test) to every pupil of limited English proficiency who is enrolled in grades 2 through 11 if the pupil was initially enrolled in any public school in the state less than 12 months prior to the date that the English language SAT-9 test is given. School districts are also required to engage in numerous activities related to test administration and reporting.

The Commission on State Mandates, in the Statement of Decision adopted at the August 24, 2000 hearing, found that the test claim legislation and regulations impose a new program or higher level of service within the meaning of section 6, article XIII B of California Constitution.

The claimant submitted its proposed parameters and guidelines on September 5, 2000. Staff received comments from the Department of Finance (DOF), the State Controller's Office (SCO), and rebuttal to those comments from the claimant. A summary of the most pertinent issues raised by the parties, and staff's Proposed Parameters and Guidelines are discussed below.

Staff Analysis

Period of Reimbursement

Staff revised the period of reimbursement proposed by claimant to reflect that the enacting legislation contained an urgency clause. Therefore, the period of reimbursement begins on October 1, 1997.

Reimbursable Activities

At the request of the SCO and DOF, staff narrowed claimant's proposed language for acquiring test materials, supplies and equipment to clarify that purchases beyond the amount required by the mandate are not reimbursable, and that requesting additional materials from the contract test provider are optional and are not reimbursable.

Staff deleted language that reimbursed school districts for collating and submitting pupil demographic information, and for additional sums paid to teachers for time spent administering the tests, since these activities were not included as reimbursable activities in the Commission's Statement of Decision.

Offsetting Savings and Other Reimbursements

Upon agreement with DOF, staff revised this section to provide that reimbursement for 1) designating site and district coordinators; 2) exempting pupils from STAR Program tests upon request of parents or guardians; 3) coordination of testing at the test site; and 4) reporting data to the school district governing board or county office of education and the Superintendent of Public Instruction, must be offset by funding provided each year in the state budget for the STAR Program.

Staff made other nonsubstantive technical revisions to claimant's proposed parameters and guidelines.

Staff Recommendation

Staff recommends that the Commission adopt staff's Proposed Parameters and Guidelines, which begin on page 7.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical corrections to the parameters and guidelines following the hearing.

Claimant

San Diego Unified School District

Chronology

08-24-00	Commission adopted Statement of Decision[1]
08-31-00	Claimant submitted Proposed Parameters and Guidelines[2]
10-18-00	State Controller's Office (SCO) submitted comments on claimant's proposal[3]
11-20-00	Department of Finance (DOF) submitted comments on claimant's proposal[4]

Staff Analysis

No comments were received on, nor did staff make any substantive changes to, sections: I. Summary of the Mandate; II. Eligible Claimants; VI. Supporting Data; or VIII. State Controller's Office Required Certification. Non-substantive changes were made for the purposes of clarification, conformity to the Statement of Decision; and consistency with language in recently adopted parameters and guidelines.

Staff modified the claimant's proposed parameters and guidelines, as discussed below:

III. Period of Reimbursement

The claimant's proposal indicated that the period of reimbursement began July 1, 1997. However, Statutes of 1997, chapter 828 was an urgency statute effective October 1, 1997. Staff therefore clarified that costs incurred after October 1, 1997 for this mandate are eligible for reimbursement.

IV. Reimbursable Activities

A. Training, Policies, and Procedures

The DOF argued that the training required for this mandate is minimal and that review of the STAR Program requirements does not appear to create a state-mandated cost. The DOF submitted that all coordinators will be fully trained on the legal requirements and, since a school must comply with all applicable laws, reviewing laws and regulations to ensure compliance would be within the existing responsibilities of a school.

In its Statement of Decision, the Commission found that "Training and review of the STAR Program requirements as outlined in the test claim legislation and regulations by school district staff" is a reasonable and necessary activity related to the mandate and therefore constitutes a reimbursable state mandate.

Staff therefore kept the claimant's language regarding reimbursement for reviewing the requirements and conducting or attending training. Staff added that, "Increased costs for substitute teacher time during the school day or for teacher stipends to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement.

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[1] Exhibit A.
[2] Exhibit B, Claimant's Proposed Parameters and Guidelines.
[3] Exhibit C, State Controller's Office comments.
[4] Exhibit D, Department of Finance comments.

However, the labor time of the teacher spent in attending training sessions during that teacher's normal classroom hours is not reimbursable." This language is consistent with past Commission decisions regarding teacher training.

B. Acquiring Test Materials, Supplies and Equipment

The SCO requested deletion of the phrase "without limitation" to prevent unnecessary reimbursement of excessive purchases beyond the amount that is required by the mandate. Staff agrees with the SCO that this language is too broad and therefore made the modification.

The claimant's proposal included reimbursement for contacting the test provider and preparing the contract. The proposal further included the Commission's finding in the Statement of Decision that preparation of the contract with the test publisher is limited to completion of the contract.

The DOF argued that the contractor is responsible for producing all testing materials required for the STAR Program in sufficient quantities to test all required students (including a 15 percent overage), which is provided for in the state budget. The DOF submitted that, to the extent that districts request additional material and/or services, such requests are voluntary on the part of the district and would not be reimbursable.

Consistent with DOF's argument, staff added the Commission's finding that; "Modification of the approved contract by school districts to include any additional materials or services pursuant to Education Code section 60643, subdivision (e)(12) is not reimbursable."

C. Pretest and Posttest Coordination

The claimant included "collect, collate, and submit pupil demographic information" as a reimbursable activity.

This activity is not required in the statute or regulations and is not included as a reimbursable activity in the Commission's Statement of Decision. Staff finds that collecting, collating and submitting pupil demographic information is not reasonably necessary to carry out the mandate, and therefore, deleted the activity from the claimant's proposal. Consistent with the regulations and the Statement of Decision, reimbursement for contracting with the test provider and returning test and enrollment data by grade level to the test publisher are included as reimbursable activities.

The DOF submitted that reimbursement for the activities of designating site and district coordinators, exempting pupils from STAR Program tests upon request of the parents or guardians, and coordination of testing at the test site should be offset by the amount provided in the annual state budget. Staff notes that the Budget Acts for each fiscal year eligible for reimbursement for this mandate include an appropriation to the California Department of Education for local assistance for administration of the STAR Program.[5] Staff identified the line-item appropriations in Section VII. Offsetting Savings and Other Reimbursements.

The DOF further submitted that districts that choose to pre-identify test forms receive funding to provide the information to the test publisher as an incentive, and therefore, the costs

[5] Exhibit E, State Budget Act line item funding for the Star Program for fiscal years: 1998-99, 1999-00, 2000-01, and 2001-02.

incurred should not be claimed through the mandated claiming process. Staff notes that the activity of pre-identifying test forms is optional and was not found as a reimbursable state mandate in the Statement of Decision.

D. Test Administration

The claimant proposed that "time spent by the classroom teacher during his or her normal classroom hours for this component is not reimbursable, unless the teacher is paid an additional sum for such time."

The SCO requested deletion of the phrase, "unless the teacher is paid an additional sum for such time" because the mandate does not require the STAR test to be given at any time other than normal school hours. In addition, the SCO submitted that the mandate does not require a district to pay teachers more during normal classroom hours when pupils are taking the STAR test.

The DOF noted that, in its Statement of Decision, the Commission found costs associated with teacher time are not reimbursable. The DOF submitted that teacher time would not be reimbursable since districts already receive a per pupil funding rate for up to 180 days (or its equivalent minutes) of instruction and that administration of the STAR Program tests falls within the time allotted for regular instruction.

In its Statement of Decision, the Commission found that administration of the STAR Program tests to all pupils in grades 2 through 11, inclusive, and administration of the additional test to pupils of limited English proficiency are reimbursable. However, the Commission further found for both tests that "Costs associated with teacher time to administer the test are not reimbursable." This language is consistent with past decisions regarding teacher time. The Commission did not find, nor do the test claim statute or regulations require, reimbursement for additional sums paid to teachers for time spent administering the tests. Staff therefore deleted that language.

E. Reporting and Recordkeeping

The claimant's proposal included reimbursement for the cost of materials and supplies used for reports "including, without limitation, paper and envelopes." The SCO requested deletion of the phrase "without limitation" to prevent a district from claiming excessive purchases. The SCO submitted that reimbursement is provided only for the cost of materials and supplies that are consumed or expended for the mandate. Staff agrees with SCO that this language is too broad and therefore made the modification.

Consistent with the Commission's finding in the Statement of Decision, staff added reimbursement for, "Submission to the State Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the STAR Program."

The DOF argued that the recording and maintaining individual records of the tests in pupil records does not create a higher level of service and that, to the extent the district chooses to provide more information that provided by law, the costs would not be reimbursable. Staff finds that the activity of recording and maintaining individual records of the tests in pupil

records is required by statute and was found to be reimbursable in the Commission's Statement of Decision. Staff agrees that the provision of additional information would not be reimbursable.

The DOF submitted that the reporting of data to the school district governing board or county office of education and the submission of the report to the Superintendent of Public instruction should be offset by the amount provided in the annual state budget. Staff notes that the Budget Acts for each fiscal year eligible for reimbursement for this mandate already include an appropriation to the California Department of Education for local assistance for administration of the STAR Program. Staff identified the line-item appropriations in Section VII. Offsetting Savings and Other Reimbursements.

V. Claim Preparation

The claimant's proposal included reimbursement for travel expenses, "including, without limitation, mileage, transportation, meals..." The SCO requested deletion of the phrase "without limitation" to prevent reimbursement of unnecessary travel costs beyond the requirement of the mandate. Staff agrees with SCO that this language is too broad and therefore made the modification.

VII: Offsetting Savings and Other Reimbursements

As noted above in Sections C and E, staff revised this section to provide that reimbursement for 1) designating site and district coordinators; 2) exempting pupils from STAR Program tests upon request of parents or guardians; 3) coordination of testing at the test site; and 4) reporting data to the school district governing board or county office of education and the Superintendent of Public Instruction, must be offset by funding already provided each year in the State Budget for the STAR Program.

IX. Parameters and Guidelines Amendments

Staff added this section to cite the Commission's regulations regarding amendments to parameters and guidelines.

Staff Recommendation

Staff recommends the Commission adopt the Claimant's Proposed Parameters and Guidelines, As Modified By Staff, beginning on page 7.

Hearing Date: October 25, 2001
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ITEM 7

CLAIMANT'S PROPOSED PARAMETERS AND GUIDELINES, AS MODIFIED BY STAFF

Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643
Statutes of 1997, Chapter 828

Title 5, California Code of Regulations, Sections 850-874

Standardized Testing and Reporting

I. SUMMARY OF THE MANDATE

Statutes of 1997, Chapter 828, ~~Statutes of 1997,~~ among other things, amended Education Code sections 60607, 60609, 60615, and 60630 and added Education Code sections 60640, 60641 and 60643. Statutes of 1997 , c~~C~~hapter 828, ~~Statutes of 1997~~ and the implementing regulations at title 5, California Code of Regulations, ~~S~~sections 850-874, established the Standardized Testing and Reporting (STAR) Program ~~a program~~ related to achievement testing that school districts must administer to pupils in the state ~~the Standardized Testing and Reporting (STAR) Program~~. The STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education. School districts administer the test in English (commonly called the "SAT-9" test) to all pupils enrolled in grades 2 through 11 and administer an additional test (commonly called the "Sabe/2" test) to every pupil of limited English proficiency who ~~are~~ is enrolled in grades 2 through 11 if the pupil was initially enrolled in any ~~school district~~public school in the state less than 12 months prior to the date that the English language SAT-9 test is given. School districts are also required to engage in numerous activities related to test administration and reporting.

The Commission on State Mandates, in the Statement of Decision adopted at the August 24, 2000 hearing, found that ~~Education Code sections 60607, 60609, 60615, 60630, 60640, 60641 and 60643 and title 5, California Code of Regulations sections 850-874~~ the test claim legislation and regulations impose a new program or higher level of service within the meaning of section 6, article XIII B of California Constitution.

II. ELIGIBLE CLAIMANTS

Any "school district," as defined in Government Code section 17519, except for community colleges, ~~which~~ that incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on March 24, 1998. Statutes of 1997, chapter 828, was an urgency statute effective on October 10, 1997. Therefore, costs incurred on or after ~~July~~ October 10, 1997 for compliance with the mandate are reimbursable.

Actual costs for one fiscal year ~~should~~ shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code s~~S~~ection 17561 (d)(~~3~~1), ~~of the Government Code,~~ all claims for reimbursement of initial years' costs shall be submitted within 120 days from the date on which ~~of issuance of the claiming instructions by~~ the State Controller's Office issues claiming instructions.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

The direct and indirect costs of labor, materials and supplies, contacted services, fixed assets, and travel incurred for the following mandate components are reimbursable:

A. Training, Policies, and Procedures:

Activities associated with training teachers and other school district personnel regarding the requirements placed upon school districts in connection with the STAR Program tests. This reimbursable component includes, but is not limited to:~~,~~

- ~~reimbursement of the l~~Labor time of administrators, teachers, and other school district personnel ~~involved with~~ to review ~~of~~ the requirements of the STAR Program (or any successor testing programs selected by the State Board of Education) and to conduct or attend training sessions. Increased costs for substitute teacher time during the school day or for teacher stipends to attend training sessions outside the regular school day (after school or on Saturday) are eligible for reimbursement. However, the labor time of the teacher spent in attending training sessions during that teacher's normal classroom hours is not reimbursable.~~,~~
- ~~P~~preparation of policies, procedures, and forms.~~, preparation for training sessions;~~
- ~~the labor time of administrators, teachers, and other school district personnel who conduct or attend training sessions; and~~
- ~~Travel expenses for the school district personnel who conduct or attend training sessions.~~

The cost of travel for and materials and supplies used or distributed in training sessions is reimbursable under this component.

B. Acquiring Test Materials, Supplies and Equipment

Activities associated with the acquisition of any materials, supplies and/or equipment required by the STAR Program, including, ~~without limitation,~~ test administrative manuals, test materials, testing equipment, test reporting materials, and computer programs, are reimbursable. This reimbursable component includes, but is not limited to:~~,~~

- Ceontacting the test provider selected by the State Board of Education and negotiating the purchase of the materials, preparing contracts or purchase orders approved by the State Board of Education for purchase of the materials. (Ed. Code, § 60643, subds. (a)(2) and (c); Cal. Code Regs., tit. 5, §§ 860, 873.) ~~, and~~ Preparation of the contract with the test publisher is limited to review, approval, and completion of the contract approved by the State Board of Education. Modification of the approved contract by school districts to include any additional materials or services pursuant to Education Code section 60643, subdivision (e)(12) is not reimbursable.
- Purchasing materials in accordance with the standard contract pursuant to the ~~State~~ California Department of Education's regulations. (Cal. Code Regs., tit. 5, §§ 856, 869, subd. (b), and 871.) ~~Administering the purchase of materials.~~
- ~~Preparation of the contract with the test publisher is limited to review, approval, and completion of the contract approved by the State Board of Education.~~

The purchase price of the materials, supplies, and equipment purchased is reimbursable under this component.

C. Pretest and Posttest Coordination

Pretest and posttest activities related to the STAR Program are reimbursable. This reimbursable component includes:

- -Llabor time of administrators, teachers and other school district personnel to designate a district STAR coordinator, designate a site STAR coordinator at each test site, determine school district and test site test and test materials needs. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.)~~;~~
- Ceonduct inventories of test materials received from the test publisher.~~;~~
- R~~r~~esolve any discrepancies in the quantity of test materials received from the test publisher.~~;~~

- D~~d~~istribute test materials to the appropriate test sites; conduct an inventory at each test site of the quantity of test materials received from the district central distribution point.~~;~~
- R~~r~~esolve any discrepancies in the quantity of test materials received from the district.~~;~~
- C~~c~~oordinate testing dates and make-up dates testing dates; collate and distribute tests, pre-identified answer sheets, and other test materials ~~is~~ at test sites to appropriate teachers or other school districts personnel who administer the tests.~~;~~
- P~~p~~repare, execute, and collect STAR Test Security Agreements from every person who has access to tests and other test materials.~~;~~
- M~~m~~aintain security over test material and test data.~~;~~
- ~~collect, collate and submit pupil demographic information;~~
- P~~p~~rocess requests for exemption from testing filed by parents and guardians. (Ed. Code, §§ 60615, 60640, subd. (j); Cal. Code Regs., tit. 5, § 852, subd. (a).)~~;~~
- R~~r~~eview the Individualized Education Program (IEP) of children with disabilities to determine if the IEP contains an express exemption from testing. (Ed. Code, § 60640, subds. (e), (j); Cal. Code Regs., tit. 5, § 852, subd. (b).)~~;~~
- D~~d~~etermine the appropriate grade level test for special education pupils and to provide appropriate testing adaptations and accommodations for these pupils. (Cal. Code Regs., tit. 5, § 852, subd. (b).)~~;~~
- C~~c~~ollect test materials after the tests are conducted.~~;~~
- C~~c~~onduct an inventory of test materials collected at each test site.~~;~~
- R~~r~~eturn test materials and test data from test sites to a central school district collection point.~~;~~
- C~~c~~onduct~~ing~~ an inventory of test materials received at the school district central collection point from test sites.~~; and~~
- R~~r~~eturn test materials, test order data, and enrollment data by grade level to the test publisher. (Cal. Code Regs., tit. 5, § 874.)

D. Test Administration

Activities associated with the administration of the STAR Program tests are reimbursable. This reimbursable component includes:

- L~~l~~abor time of administrators and other school district personnel to conduct and monitor the STAR Program tests given to all pupils in grades 2 through

11, inclusive. (Ed. Code, §§ 60640, subds. (b), (c), 60641, subd. (a); Cal. Code Regs., tit. 5, §§ 851, 852, subd. (b), 853, and 855.)~~, and~~

- To the extent that such tests are available, giving an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. (Ed. Code, § 60640, subd. (g); Cal. Code Regs., tit. 5, § 851, subd. (a).)~~;~~

~~provided, however, that t~~Time spent by the classroom teacher during his or her normal classroom hours for this component is not reimbursable~~, unless the teacher is paid an additional sum for such time~~.

E. Reporting and Record Keeping

Activities associated with administration of the STAR Program reporting and record keeping requirements are reimbursable. This reimbursable component includes:

- L~~l~~abor time of administrators, teachers, and other school district personnel in recording and maintaining individual records of the tests in pupil records. (Ed. Code, §§ 60607, subd. (a), 60641, subd. (a).)~~;~~
- P~~p~~reparation and mailing of reports of the individual results of the STAR Program tests to the pupils' parents or guardians, to the pupils' schools, and the pupils' teachers. (Ed. Code, § 60641, subds. (b) and (c); Cal. Code Regs., tit. 5, § 863.)~~;~~
- R~~r~~eporting the results of the STAR Program tests to the school district governing board or county office of education on a districtwide and school-by-school basis. (Ed. Code, § 60641, subd. (d); Cal. Code Regs., tit. 5, § 864.)~~; and~~
- C~~c~~ollecting, collating and submitting to the ~~State Department of Education~~Superintendent of Public Instruction the information on the STAR Program apportionment information report. (Ed. Code, § 60640, subd. (j); Cal. Code Regs., tit. 5, § 862.)
- Submission to the ~~State~~ California Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the STAR Program. (Ed. Code, § 60630, subd. (b); Cal. Code Regs., tit. 5, § 861.)

The cost of materials and supplies used for reports (including, ~~without limitation,~~ paper and envelopes), the cost of postage for mailing reports to parents, and the cost of computer programming used for reporting purposes is reimbursable under this component.

V. CLAIM PREPARATION

Each claim for reimbursement ~~pursuant to this mandate~~ must be timely filed and ~~set~~ identify each cost ~~forth a listing of each item~~ for which reimbursement is claimed under this mandate. Claimed costs must be identified ~~allocated according~~ to ~~the~~ each ~~components of~~ reimbursable activity described in Section IV of these parameters and guidelines.

A. Direct Costs

Direct costs are defined as costs that can be traced to specific goods, services, programs, activities, or functions and shall be supported by the following cost element information:

1. ~~Employee~~ Salaries and Benefits

Identify the employee(s) and/or show the classification of the employee(s) involved. Describe the reimbursable activities ~~mandated functions~~ performed and specify the actual time devoted to each reimbursable activity ~~function~~ by each employee, productive hourly rate, and related fringe benefits. ~~The average number of hours devoted to each function may be claimed if supported by a documented time study.~~

Reimbursement for personnel services includes compensation for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g. annual leave, sick leave) and the employer's contributions to social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities performed by the employee.

2. Materials and Supplies

Only the expenditures that ~~which~~ can be identified as ~~a~~ direct costs of ~~the~~ this mandate can be claimed. List the cost of materials and supplies ~~which have been~~ consumed ~~or expended~~ specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based upon a recognized method of costing, consistently applied.

3. Contracted Services

Provide the name(s) of the contractor(s) who performed the service(s), including any fixed contracts for services. Describe the reimbursable activities performed by each named contractor and give the number of actual hours spent on the activities, if applicable.~~,~~ ~~s~~Show the inclusive dates when services were performed and itemize all costs for those services. ~~For fixed price contracts, list only the activities performed, the~~

~~dates services were performed and the contract price.~~ Attach a copy of the contract to the claim.

4. Fixed Assets

List the purchase price paid for equipment and other fixed assets acquired for this mandate. Purchase price includes taxes, delivery costs, and installation costs. If the equipment or other ~~fixed~~ capital asset is used for purposes other than for this mandate, only the pro rata ~~portion of the~~ purchase price can be claimed. ~~is reimbursable.~~

5. Travel

Travel expenses for ~~, including, without limitation,~~ mileage, ~~transportation, meals,~~ per diem, lodging, ~~parking,~~ and ~~telephone,~~ other employee entitlements are eligible for reimbursement ~~able~~ in accordance with the rules of the local jurisdiction. ~~school district procedures.~~ Provide the name(s) of the traveler(s), ~~person(s) traveling,~~ purpose of the travel, inclusive dates and times of travel, destination point(s), and travel costs~~expenses~~.

6. Training

The cost of training an employee to perform ~~for~~ the mandated activities, as specified in Section IV of these parameters and guidelines, is eligible for reimbursement ~~reimbursable~~. Identify the employee(s) by name and job classification. Provide the title and subject ~~name~~ of the training session, the dates ~~of attendance~~ attended, and the location. Reimbursable costs may include ~~, but are not limited to,~~ salaries and benefits, ~~of personnel conducting or attending the training,~~ registration fees, transportation, lodging, and per diem. ~~and travel expenses.~~

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate, and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

1. School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

2. County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

VI. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents (e.g., employee time records, cost allocation reports, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, time studies, etc.) ~~and/or worksheets~~ that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed or last amended, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim. ~~These documents must be made available to the State Controller on the request.~~

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings ~~provided in the test claim statute that~~ the claimant experiences as a direct result of this mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to federal funds and other state funds, ~~additional revenue that was specifically intended to fund the costs of this mandate, and any service charges, fees or assessments that were authorized to pay the costs of this mandate~~ shall be identified and deducted from this claim. ~~to the extent that the claimant received such revenue, service charges, fees, or assessments. Apportionments for the STAR Program received by a school district for a particular fiscal year shall be deducted from the reimbursement claim for that fiscal year under "under reimbursements."~~

Specifically, reimbursement for 1) designating site and district coordinators; 2) exempting pupils from STAR Program tests upon request of parents or guardians; 3) coordination of testing at the test site; and 4) reporting data to the school district governing board or county office of education and the Superintendent of Public Instruction shall be offset by funding provided in the State Budget for the STAR Program.

VIII. STATE CONTROLLER'S OFFICE REQUIRED CERTIFICATION

An authorized representative of the claimant shall ~~will~~ be required to provide a certification of claim, as specified in the State Controller's claiming instructions, for those costs mandated by the state contained herein.

IX. PARAMETERS AND GUIDELINES AMENDMENTS

Pursuant to Title 2, California Code of Regulations, section 1183.2, parameters and guidelines amendments filed before the deadline for initial claims as specified in the claiming instructions shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed after the initial claiming deadline must be submitted on or before January 15 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year.

EXHIBIT A

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, as amended by Statutes of 1997, Chapter 828; Title 5, California Code of Regulations, Sections 850-874; and Filed on March 23, 1998 By the San Diego Unified School District, Claimant.	No. 97-TC-23 *Standardized Testing and Reporting* 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 on August 24, 2000)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on August 25, 2000.

Paula Higashi, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:	No. 97-TC-23
Education Code Sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, as amended by Statutes of 1997, Chapter 828; Title 5, California Code of Regulations, Sections 850-874; and Filed on March 23, 1998 By the San Diego Unified School District, Claimant.	*Standardized Testing and Reporting* 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 on August 24, 2000)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on July 27, 2000 during a regularly scheduled hearing. James Cunningham, Richard Knott, and Robert Raines appeared for San Diego Unified School District. Jeannie Oropeza and Pete Zervinka appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 7-0, approved this test claim.

BACKGROUND AND FINDINGS

Background on Statewide Achievement Tests

The test claim legislation and regulations established a program related to achievement testing that school districts must administer to pupils in the state – the Standardized Testing and Reporting (STAR) Program. The STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education. School districts are also required to engage in numerous activities related to test administration and reporting.

The state has required school districts to administer achievement tests to pupils for decades. For example, achievement tests were required for pupils in grades 6 and 12 under the California School Testing Act of 1969.[1] In 1972, the Legislature expressed its intent regarding pupil testing as follows:

> "It is the intent of the Legislature . . . to determine the effectiveness of school districts and schools in assisting pupils to master the fundamental educational skills towards which instruction is directed. The program of statewide testing shall provide the public, Legislature, and school districts evaluative information regarding the various levels of proficiency achieved by different groups of pupils of varying socioeconomic backgrounds, so that the Legislature and individual school districts may allocate educational resources in a manner to assure the maximum educational opportunities for all pupils. The program or statewide testing shall identify unusual success or failure and the factors which appear to be responsible, so that appropriate action may be taken at the district and state level to obtain the highest quality education for all public school pupils."[2]

In 1990, the Legislature expressed that the purpose of California's public school system is to "facilitate the development of each and every one of its pupils to become a self-motivated, competent, and lifelong learner."[3] The Legislature stated that: "the current pupil assessment system does not meet [these] purposes."[4] The Legislature further declared that:

> "There is no consistent system that pupils and parents can use to assess the performance of schools and school districts in providing effective programs and to measure the academic achievement of pupils. The five grade levels currently tested under the California school assessment program do not provide the most efficient assessment of overall pupil achievement."[5]

Statutes of 1990, Chapter 760 modified the state's achievement testing to require the testing of pupils in grades 4, 5, 8, and 10. Former Education Code section 60600.1, as added by Statutes of 1990, Chapter 760, provided that:

> "[Chapter 760] shall remain in effect only until January 1, 1995, and as of that date is repealed unless a later enacted statute, which is enacted *before* January 1, 1995, deletes or extends that date." (Emphasis added.)

The Legislature did not enact a statute before January 1, 1995 that either deleted or extended the date regarding the administration of achievement tests. However, Statutes of 1995, Chapter 975, enacted the Leroy Greene California Assessment of Academic Achievement Act,

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[1] *See* former Education Code section 12820 cited as Exhibit C in the claimant's test claim filing.

[2] *See* former Education Code section 12821 cited as Exhibit C in the claimant's test claim filing.

[3] Section 1 of Statutes of 1990, Chapter 760 cited as Exhibit E in the claimant's test claim filing.

[4] Section 1.3 of Statutes of 1990, Chapter 760 cited as Exhibit E in the claimant's test claim filing.

[5] *Ibid.*

which provided incentive funding for the provision of achievement testing to pupils in grades 2 through 10, inclusive, to each school district that certifies to the Superintendent of Public Instruction that they will administer such tests. The Commission notes that the achievement-testing program enacted under Chapter 975 was optional. Since the Legislature did not enact a statute by the requisite deadline set forth in Chapter 760, the Commission found that mandatory achievement testing was repealed by operation of law effective January 1, 1995.

Does the Test Claim Legislation Impose a New Program or Higher Level of Service?

The Commission found that the test claim legislation and regulations involve the administration of pupil achievement tests. Public education in California is a peculiarly governmental function administered by school districts as a service to the public. Moreover, the test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Therefore, the Commission found that administering pupil achievement tests constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.[6]

Prior Law Related to Achievement Tests

The Commission noted that the law in effect immediately before the enactment of the test claim legislation did not require school districts to administer achievement tests to pupils. Rather, prior law set up an incentive program for school districts that administer achievement tests to all pupils in grades 2 though 10.[7] Former Education Code section 60640 provided $5 per pupil tested to those districts that certified to the Superintendent of Public Instruction that it would administer achievement tests to all pupils in grades 2 through 10. Section 60640 did not require districts to administer achievement tests to those pupils.

The Test Claim Legislation: Current Law Related to the Standardized Testing and Reporting (STAR) Program

The Commission found that the test claim legislation and regulations established a program related to achievement testing that school districts must administer to pupils in the state – the Standardized Testing and Reporting (STAR) Program.[8]

The Commission found that the STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education.[9] The Commission found that

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[6] *Long Beach Unified School Dist.* v. *State of California* (1990) 225 Cal.App.3d 155, 172.

[7] *See* former Education Code section 60640 cited as Exhibit F in the claimant's test claim filing.

[8] The Commission noted that the original test claim filing included portions of the Education Code that related to the Academic Skills Assessment Program. However, the Department of Education has yet to promulgate regulations to implement the Program. Therefore, the claimant filed a motion to partially sever and withdraw those portions of this test claim that relate to the Academic Skills Assessment Program.

[9] The State Department of Education is administered through (1) the State Board of Education, which is the governing and policy determining body of the Department and (2) the Director of Education who is responsible for all executive and administrative functions of the Department and is the executive officer of the State Board of Education. *See* Education Code sections 33301, 33303. The State Superintendent of Public Instruction oversees

school districts must also: designate a STAR Program district coordinator and STAR Program test site coordinator at each test site; administer an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was enrolled in the district for less than 12 months before the time the last STAR Program test was administered; exempt pupils under certain circumstances; include STAR Program test results in the pupil's record or achievement; report STAR Program test results to the district's governing board or county board of education and to the pupil's parent or guardian; submit a report to the Superintendent of Public Instruction; contract with a test publisher to receive the tests; and submit whatever information the State Department of Education deems necessary to permit the State Superintendent of Public Instruction to prepare reports on the results of the STAR Program.[10]

The Commission also found that the state had required school districts to administer achievement tests to pupils since the 1960's, until Statutes of 1991, Chapter 760, repealed the mandatory achievement-testing requirement as of January 1, 1995. Statutes of 1995, Chapter 975, enacted the Leroy Greene California Assessment of Academic Achievement Act (Achievement Act), which provided incentive funding for the provision of achievement testing to pupils in grades 2 through 10, inclusive, to each school district that certifies to the Superintendent of Public Instruction that they will administer such tests. The Commission found that under the Achievement Act, the law in effect between January 1, 1996 and October 10, 1997, the operative date of the test claim legislation, school districts could *voluntarily* administer achievement tests to district pupils. However, the test claim legislation reinstated mandatory achievement testing under the STAR Program beginning on October 10, 1997. Thus, the Commission found that the test claim legislation and regulations have imposed a new program or higher level of service upon school districts since the law in effect prior to the enactment of the test claim legislation did not require the administration of achievement tests.

Based on the foregoing, the Commission found that the test claim legislation and regulations impose a new program upon school districts for the administration of the STAR Program.

Does the Test Claim Legislation Constitute Costs Mandated by the State?

Testing In General

The Commission found that in order for the test claim legislation and regulations to impose a reimbursable program under section 6, article XIII B of the California Constitution, the newly required activities must be state mandated.[11] The issue of whether the test claim legislation and regulations imposed costs mandated by the state centers on whether Government Code section 17556, subdivision (e), applies.

The Commission recognized that Government Code section 17556, subdivision (e), provides:

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the schools of this state and executes, under the direction of the State Board of Education, the policies that have been decided upon by the Board. The Superintendent is also ex-officio the director and executive director of the State Department of Education. *See* Education Code sections 33301-33303, 33111, 33112.

[10] *See* Education Code sections 60607, 60615, 60630 60640, 60641, 60643, and Title 5, California Code of Regulations, sections 851-853, 855-860, 865, 867-869, 871, 873.

[11] *Lucia Mar Unified School Dist.*, *supra* 44 Cal.3d 830, 835.

"The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:

" .....

"(e) The statute . . . includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate."

The Commission also noted that section 60640, subdivision (h), provides:

"The Superintendent of Public Instruction shall apportion funds to enable school districts to meet the [STAR Program] requirements. . . . The State Board of Education shall establish the amount of funding to be apportioned. The amount to be apportioned shall be up to eight dollars ($8) per test administered to a pupil in grades 2 to 11, inclusive."

The claimant contended that section 17556, subdivision (e), is inapplicable to the present test claim because section 60640, subdivision (h), did not appropriate additional revenue in an amount sufficient to fund the mandate.[12] The claimant further contended that the State Board of Education's reimbursement rate of $6.65 per test, with an additional $0.15 per test for districts requesting preprinted answer sheets, is not enough to cover the cost of administering the STAR Program.[13]

The Commission found that the test claim legislation *authorized* the Superintendent of Public Instruction to apportion funds for administration of the STAR Program as established by the State Board of Education. However, the test claim legislation did not itself include "additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate." Thus, the Commission found that Government Code section 17556, subdivision (e), is inapplicable to this test claim. Accordingly, the Commission found that the test claim legislation imposed costs mandated by the state upon school districts.

The Commission noted that the Legislature has appropriated the following amounts for administration of the STAR Program in the state Budget Act: 1997-98 – $30,400,000; 1998-99 – $39,700,000; 1999-00 – $42,100,000. The Commission noted that funds received by school districts for the administration of the STAR Program pursuant to the State Board of Education's reimbursement rate should be offset against total claim amounts for this test claim.

Testing of Children with Disabilities

The Commission found that the test claim legislation requires that: (1) children with disabilities be exempted from testing for pupils if the pupil's individualized education program has an

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[12] The Commission noted that the Department of Finance states: "we have concluded that the statute may have resulted in some costs mandated by the State."

[13] *See* Claimant's test claim filing, Exhibit H, Nick Bohl's declaration. The claimant estimates it would cost San Diego Unified School District $14.00 per test per fiscal year to administer the STAR Program.

exemption provision; (2) districts determine the appropriate grade level test for each pupil in a special education program; and (3) districts provide appropriate testing adaptation or accommodations to pupils in special education programs.

DOF contended that these activities stem from federal law and therefore, pursuant to Government Code section 17556, subdivision (c), are not reimbursable.[14] The Commission recognized that Government Code section 17556, subdivision (c), provides:

> "The commission shall not find costs mandated by the state . . . in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> " .....
>
> "(c) The statute . . . implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute . . . mandates costs which exceed the mandate in that federal law or regulation."

Specifically, DOF cited to subdivision (a)(16), section 1412 of the United States Code, which provides:

> "(16) Performance goals and indicators
>
> "The State—
>
> "(A) has established goals for the performance of children with disabilities in the State that—
>
> "(i) will promote the purposes of this chapter, as stated in section 1400(d) of this title; and
>
> "(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;
>
> "(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;
>
> "(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and
>
> "(D) based on its assessment of that progress, will revise its State improvement plan under part A of subchapter IV of this chapter as may be needed to improve its performance, if the State receives assistance under that part.".

The Commission found that, based on the plain reading of subdivision (a) above, that federal law *does not* require testing exemptions; the determination of appropriate test levels; or the

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[14] Department of Finance's July 10, 2000 filing at page 2.

provision of testing accommodations for children with disabilities. Therefore, the Commission found that these activities are reimbursable and that funding received by school districts for administration of the STAR Program shall be offset against reimbursement claims.

CONCLUSION

Based on the foregoing, the Commission concluded that the test claim legislation and regulations for the STAR Program impose a reimbursable state-mandated program upon school districts within the meaning of section 6, article XIII B of the California Constitution and Government Code section 17514 for the following activities:

- Administration of the STAR Program tests to all pupils in grades 2 through 11, inclusive. (Ed. Code, §§ 60640, subds. (b), (c), 60641, subd. (a); Cal. Code Regs., tit. 5, §§ 851, 852, subd. (b), 853, and 855.) Costs associated with teacher time to administer the test are not reimbursable.
- Designation of a STAR Program district coordinator. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.)
- Designation of a STAR Program test site coordinator at each test site. (Cal. Code Regs., tit. 5, §§ 857-859, 865, 867, and 868.)
- Administration of an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given. Only reimbursable to the extent such tests are available. (Ed. Code, § 60640, subd. (g); Cal. Code Regs., tit. 5, § 851, subd. (a).) Costs associated with teacher time to administer the test are not reimbursable.
- Exemption from testing for pupils if the pupil's individualized education program has an exemption provision. (Ed. Code, § 60640, subds. (e), (j); Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Determination of the appropriate grade level test for each pupil in a special education program. (Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Provision of appropriate testing adaptation or accommodations to pupils in special education programs. (Cal. Code Regs., tit. 5, § 852, subd. (b).)
- Inclusion of STAR Program test results in each pupil's record of accomplishment. (Ed. Code, §§ 60607, subd. (a), 60641, subd. (a).)
- Reporting of individual STAR Program test results in writing to each pupil's parent or guardian and to the pupil's school and teachers. (Ed. Code, § 60641, subds. (b) and (c); Cal. Code Regs., tit. 5, § 863.)
- Reporting of district-wide, school-level, and class-level results to the school district's governing board or county office of education. (Ed. Code, § 60641, subd. (d); Cal. Code Regs., tit. 5, § 864.)

- Submission of a report on the STAR Program to the Superintendent of Public Instruction. (Ed. Code, § 60640, subd. (j); Cal. Code Regs., tit. 5, § 862.)
- Contracting with a test publisher selected by the State Board of Education using an agreement approved by the State Board of Education. (Ed. Code, § 60643, subds. (a)(2) and (c); Cal. Code Regs., tit. 5, §§ 860, 873.) This activity is limited to completing the agreement approved by the State Board of Education. Modification of the approved agreement by school districts to include any additional materials or services pursuant to Education Code section 60643, subdivision (e)(12) is not reimbursable.
- Payment of sales tax to the publisher. (Cal. Code Regs., tit. 5, § 856.)
- Completion of delivery schedule and order form. (Cal. Code Regs., tit. 5, § 874.)
- Provision to the test publisher of enrollment and test order data by grade level. (Cal. Code Regs., tit. 5, § 874.)
- Administration of the standard agreement pursuant to the State Department of Education's regulations. (Cal. Code Regs., tit. 5, §§ 856, 869, subd. (b), and 871.)
- Exemption of pupils from the STAR Program tests upon request of their parent or guardian. (Ed. Code, §§ 60615, 60640, subd. (j); Cal. Code Regs., tit. 5, § 852, subd. (a).)
- Submission to the State Department of Education whatever information the Department deems necessary to permit the Superintendent of Public Instruction to prepare a report analyzing, on a school-by-school basis, the results and test scores of the STAR Program. (Ed. Code, § 60630, subd. (b); Cal. Code Regs., tit. 5, § 861.)
- Training and review of the STAR Program requirements as outlined in the test claim legislation and regulations by school district staff.
- Implementation of procedures relating the administration of the STAR Program.

CSM 97-TC-23
PROPOSED PARAMETERS AND GUIDELINES

Chapter 828, Statutes of 1997
Education Code sections 60607, 60609, 60615, 60630, 60640, 60641 and 60643
Title 5, California Code of Regulations sections 850-874

RECEIVED
SEP 05 2000
COMMISSION ON STATE MANDATES

Standardized Testing and Reporting

I. SUMMARY OF THE MANDATE

Chapter 828, Statutes of 1997, among other things, amended Education Code sections 60607, 60609, 60615, and 60630 and added Education Code sections 60640, 60641 and 60643. Chapter 828, Statutes of 1997 and the implementing regulations at title 5, California Code of Regulations, Sections 850-874, established a program related to achievement testing that school districts must administer to pupils in the state – the STAR Program. The STAR Program requires school districts, between March 15 and May 15 each year, to test all students in grades 2 through 11 with a nationally normed achievement test designated by the State Board of Education. School districts administer the test in English (commonly called the "SAT-9" test) to all pupils enrolled in grades 2 through 11 and administer an additional test (commonly called the "Sabe/2" test) to every pupil of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months prior to the date that the English language SAT-9 test is given. School districts are also required to engage in numerous activities related to test administration and reporting.

The Commission on State Mandates, in the Statement of Decision adopted at the August 24, 2000 hearing, found that Education Code sections 60607, 60609, 60615, 60630, 60640, 60641 and 60643 and title 5, California Code of Regulations sections 850-874 impose a new program or higher level of service within the meaning of section 6, article XIII B of the California Constitution.

II. ELIGIBLE CLAIMANTS

Any school district, as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate is eligible to claim reimbursement.

III. PERIOD OF REIMBURSEMENT

Section 17557 of the Government Code states that a test claim must be submitted on or before December 31 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on March 24, 1998. Therefore, costs incurred on or after July 1, 1997 for compliance with the mandate are reimbursable.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Section 17561(d)(3) of the Government Code, all claims for reimbursement of initial years' costs shall be submitted within 120 days of issuance of the claiming instructions by the State Controller.

If the total costs for a given fiscal year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

The direct and indirect costs of labor, materials and supplies, contracted services, fixed assets, and travel incurred for the following mandate components are reimbursable:

A. Training, Policies, and Procedures.

Activities associated with training teachers and other school district personnel regarding the requirements placed upon school districts in connection with the STAR Program tests. This reimbursable component includes, but is not limited to, reimbursement of the labor time of administrators, teachers, and other school district personnel involved with review of the requirements of the STAR Program (or any successor testing programs selected by the State Board of Education), preparation of policies, procedures, and forms, preparation for training sessions; the labor time of administrators, teachers, and other school district personnel who conduct or attend training sessions; and travel and seminar expenses for the school district personnel who conduct or attend training sessions. The cost of materials and supplies used or distributed in training sessions is reimbursable under this component.

B. Acquiring Test Materials, Supplies and Equipment.

Activities associated with the acquisition of any materials, supplies and/or equipment required by the STAR Program, including, without limitation, test administrative manuals, test materials, testing equipment, test reporting materials, and computer programs, are reimbursable. This reimbursable component includes, but is not limited to, contacting the test provider and negotiating the purchase of the materials, preparing contracts or purchase orders for purchase of the materials, and administering the purchase of materials. Preparation of the contract with the test publisher is limited to review, approval, and completion of the contract approved by the State Board of Education. The purchase price of the materials, supplies, and equipment purchased is reimbursable under this component.

C. Pretest and Posttest Coordination.

Pretest and posttest activities related to the STAR Program are reimbursable. This reimbursable component includes labor time of administrators, teachers and other school district personnel to designate a district STAR coordinator, designate a site STAR coordinator at each test site, determine school district and test site test and test materials

needs; conduct inventories of test materials received from the test publisher; resolve any discrepancies in the quantity of test materials received from the test publisher; distribute test materials to the appropriate test sites; conduct an inventory at each test site of the quantity of test materials received from the district central distribution point; resolve any discrepancies in the quantity of test materials received from the district; coordinate testing dates and make-up testing dates; collate and distribute tests, pre-identified answer sheets, and other test materials at test sites to appropriate teachers or other school district personnel who administer the tests; prepare, execute, and collect STAR Test Security Agreements from every person who has access to tests and other test materials; maintain security over test material and test data; collect, collate and submit pupil demographic information; process requests for exemption from testing filed by parents and guardians; review the Individualized Education Program (IEP) of children with disabilities to determine if the IEP contains an express exemption from testing; determine the appropriate grade level test for special education pupils and to provide appropriate testing adaptations and accommodations for these pupils; collect test materials after the tests are conducted; conduct an inventory of test materials collected at each test site; return test materials and test data from test sites to a central school district collection point; conducting an inventory of test materials received at the school district central collection point from test sites; and return test materials, test data, and enrollment data to the test publisher.

D. Test Administration.

Activities associated with the administration of the STAR Program tests are reimbursable. This reimbursable component includes labor time of administrators and other school district personnel to conduct and monitor the STAR Program tests given to all pupils in grades 2 through 11, inclusive, and giving an additional test to pupils of limited English proficiency who are enrolled in grades 2 through 11 if the pupil was initially enrolled in any school district less than 12 months before the date that the English language STAR Program test was given; provided, however, that time spent by the classroom teacher during his or her normal classroom hours for this component is not reimbursable, unless the teacher is paid an additional sum for such time.

E. Reporting and Record Keeping.

Activities associated with administration of the STAR Program reporting and record keeping requirements are reimbursable. This reimbursable component includes labor time of administrators, teachers, and other school district personnel in recording and maintaining individual records of the tests in pupil records; preparation and mailing of reports of the individual results of the STAR Program tests to the pupils' parents or guardians, to the pupils' schools, and the pupils' teachers; reporting the results of the STAR Program tests to the school district governing board on a districtwide and school-by-school basis; and collecting, collating and submitting to the State Department of Education the information on the STAR Program apportionment information report. The cost of materials and supplies used for reports (including, without limitation, paper and

envelopes), the cost of postage for mailing reports to parents, and the cost of computer programming used for reporting purposes is reimbursable under this component.

V. CLAIM PREPARATION

Each claim for reimbursement pursuant to this mandate must be timely filed and set forth a listing of each item for which reimbursement is claimed under this mandate. Claimed costs must be allocated according to the components of reimbursable activity described in Section IV.

A. Direct Costs.

1. Employee Salaries and Benefits

Identify the employee(s) and/or the classification of the employee(s) involved. Describe the mandated functions performed and specify the time devoted to each function by employee, productive hourly rate, and related fringe benefits. The average number of hours devoted to each function may be claimed if supported by a documented time study.

2. Materials and Supplies

Only the expenditures which can be identified as a direct cost of the mandate can be claimed. List cost of materials and supplies which have been consumed or expended specifically for the purpose of this mandate.

3. Contracted Services

Provide the name(s) of the contractors(s) who performed the service(s). Describe the activities performed by each named contractor, and give the number of actual hours spent on the activities, if applicable, show the inclusive dates when services were performed and itemize all costs for those services. For fixed price contracts, list only the activities performed, the dates services were performed and the contract price. Attach a copy of the contract to the claim.

4. Fixed Assets

List the purchase price paid for equipment and other fixed assets acquired for this mandate. Purchase price includes taxes, delivery costs and installation costs. If the equipment or other fixed asset is used for purposes other than for this mandate, only the pro rata portion of the purchase price is reimbursable.

5. Travel

Travel expenses, including, without limitation, mileage, transportation, meals, per diem, lodging, parking, and telephone, are reimbursable in accordance with school

district procedures. Provide the name(s) of the person(s) traveling, purpose of travel, inclusive dates of travel, destination(s), and travel expenses.

6. Training

The cost of training for the activities specified in Section IV is reimbursable. Identify the employee(s) by name and job classification. Provide the name of the training session, the dates of attendance, and the location. Reimbursable costs include, but are not limited to, salaries and benefits of personnel conducting or attending the training, registration fees, and travel expenses.

B. Indirect Cost

1. School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

2. County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the Sate Department of Education.

VI. SUPPORTING DATA

For auditing purposes, all costs claimed must be traceable to source documents and/or worksheets that show evidence of the validity of such costs. Pursuant to Government Code section 17558.5, these documents must be kept on file by the agency submitting the claim for a period of no less than two years after the later of (1) the end of the calendar year in which the reimbursement claim is filed, or (2) if no funds are appropriated for the fiscal year for which the claim is made, the date of initial payment of the claim. These documents must be made available to the State Controller on the request.

VII. OFFSETTING SAVINGS AND OTHER REIMBURSEMENTS

Any offsetting savings provided in the test claim statute that the claimant experiences as a direct result of this mandate must be deducted from the costs claimed. In addition, any additional revenue that was specifically intended to fund the costs of this mandate, and any service charges, fees or assessments that were authorized to pay the costs of this mandate shall be identified and deducted from this claim to the extent that the claimant received such revenue, service charges, fees, or assessments. Apportionments for the STAR Program received by a school district for a particular fiscal year shall be deducted from the reimbursement claim for that fiscal year under "other reimbursements."

VIII. REQUIRED CERTIFICATION

An authorized representative of the claimant will be required to provide a certification of claim, as specified in the State Controller's claiming instructions, for those cost mandated by the state contained herein.

EXHIBIT C

KATHLEEN CONNELL

Controller of the State of California

RECEIVED
OCT 24 2000
COMMISSION ON
STATE MANDATES

October 18, 2000

Ms. Shirley Opie
Assistant Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

RE: PROPOSED PARAMETERS AND GUIDELINES
STANDARDIZED TESTING AND REPORTING, 97-TC-23
EDUCATION CODE SECTIONS 60607, ET AL
STATUTES OF 1997, CHAPTER 828
TITLE 5, CALIFORNIA CODE OF REGULATIONS,
SECTIONS 850 - 874

Dear Ms. Opie:

We have reviewed the proposed Parameters and Guidelines submitted by the San Diego Unified School District for the above subject matter. The following are suggested amendments:

1. Under B. Acquiring Test Materials, Supplies and Equipment, delete the phrase in the first sentence "Activities associated with the acquisition of any materials, supplies and /or equipment required by the STAR program, including, ~~without limitation~~, test administrative manuals, test materials, testing equipment, test reporting materials, and computer programs, are reimbursable." (~~Deletion~~).

   This suggested change is necessary to prevent the reimbursement of excessive purchases beyond the amount that is required by the mandate.

2. Under D. Test Administration, delete the last phrase in the sentence "...that the time spent by the classroom teacher during his or her normal classroom hours for this component is not reimbursable, ~~unless the teacher is paid an additional sum for such time~~."

   This suggested change is necessary because the mandate does not require the STAR test to be given at any time other than normal school hours. In addition, the mandate does not require a district to pay extra gratuity to a teacher during normal classroom hours when pupils are taking the STAR test.

MAILING ADDRESS P.O. Box 942850, Sacramento, CA 94250
SACRAMENTO 300 Capitol Mall, Suite 1850, Sacramento, CA 95814 (916) 445-2636
LOS ANGELES 600 Corporate Pointe, Su 477 Culver City, CA 90230 (310) 342-5678

3. Under E. Reporting and Record Keeping, make an adjustment to the last sentence. "The cost of materials and supplies used for reports (including, ~~without limitation~~, paper and envelopes), the cost of postage for mailing reports to parents, and the cost of computer programming used for reporting purposes is reimbursable under this component."

   This suggested change is necessary to prevent a district from claiming excessive purchases. Reimbursement is provided only for the cost of materials and supplies that are consumed or expended for the mandate.

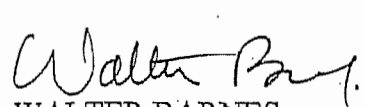
4. Under V.5. Travel, delete the phrase in the first sentence "Travel expenses, including, ~~without limitation~~, mileage, transportation, meals, per diem, lodging, parking, and telephone, are reimbursable accordance with school district procedures.

   This suggested change is necessary to prevent reimbursement of unnecessary travel costs beyond the requirement of the mandate.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list that accompanied your letter dated October 2, 2000, have been provided with copies of this letter via either U. S. Mail or, in the case of state agencies, Interagency Mail service.

If you have any questions, please contact Ms. Ginny Brummels, Supervising Analyst, at (916) 323-2364.

Sincerely,



WALTER BARNES
Chief Deputy State Controller, Finance

WB:WGA:glb

cc: Interested parties

PROOF OF SERVICE BY MAIL

CSM – 97-TC-23

I, the undersigned, declare as follows:

I am a citizen of the United States and a resident of the County of Sacramento. I am over the age of 18 years and not a party to the within action. My place of employment and business address is 3301 C Street, Suite 500, Sacramento, California 95816.

On October 20, 2000, I served the attached recommendation of the State Controller's Office by placing a true copy thereof enclosed in a sealed envelope addressed to each of the persons named below at the addresses shown and by depositing said envelopes in the United States mail at Sacramento, California, with postage thereon fully prepaid.

Mr. Paige Vorhies
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. James Lombard
Department of Finance
915 L Street
Room 8020
Sacramento, CA 95814

Mr. Jim Spano
State Controller's Office
Division of Audits (B-8)
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Harmeet Barkscat
Mandate Resource Services
8254 Health Peak Place
Antelope, CA 95843

Carol Berg, Ph.D.
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Ms. Laurie Mc Vay
DMG-MAXIMUS
4320 Auburn Blvd.,
Suite 2000
Sacramento, CA 95841

Mr. Paul Minney
Girard & Vinson
1676 N. California Blvd., Suite 450
Walnut Creek, CA 94596

Mr. Andy Nichols
Vavrinek Trine Day & Co., LLP
8300 Fair Oaks Blvd.,
Suite 403
Carmichael, CA 95608

Mr. Anthony Murray
Loeb & Loeb
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Los Angeles, CA 90017

Mr. Allan Burdick
DMG MAXIMUS
4320 Auburn Blvd.,
Suite 2000
Sacramento, CA 95841

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

Mr. William A. Doyle
Mandated Cost Administrator
San Jose Unified School District
1153 El Prado Drive
San Jose, CA 95120

Mr. Steve Smith
Mandated Cost Systems
2275 Watt Avenue
Suite C
Sacramento, CA 95825

Mr. Wayne Martin
Director of Budget and Accounting
Stockton Unified School District
701 N. Madison Avenue
Stockton, CA 95202-1687

Mr. John B. Mockler
Executive Director
State Board of Education
721 Capital Mall, Room 532
Sacramento, CA 95814

Mr. Jim Cunningham
Legislative Mandate Specialist
San Diego City Schools
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

Mr. Dean Getz
Vavrinek Trine Day & Co., LLP
8300 Fair Oaks Blvd., Suite 403
Carmichael, CA 95608

Mr. Scott Hannan, Manager
Department of Education
School Business Services
560 J Street, Suite 170
Sacramento, CA 95814

Mr. Joseph D. Mullender, Jr.,
Attornet at Law
89 Rivo Alto canal
Long Beach, CA 90803

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 20, 2000, at Sacramento, California.

Emelda M. Lowi-Teng

Emelda M. Lowi-Teng

EXHIBIT D

DEPARTMENT OF FINANCE
GRAY DAVIS, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

November 20, 2000

RECEIVED
NOV 27 2000
COMMISSION ON STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms Higashi:

As requested in your letter of October 2, 2000, the Department of Finance has reviewed the Parameter and Guidelines, Standardized Testing and Reporting (CSM-97-TC-23), submitted by the San Diego Unified School District related to costs incurred under Chapter No. 828, Statutes of 1997. We are responding to the following activities identified as reimbursable state mandates by the claimants:

Activity A: Training, Policies, and Procedures.

The requirement on a school district to train staff on the STAR Program requirements as outlined in the test claim legislation and regulations may involve some costs, but these costs will vary from district to district. DOF notes that that the training required is minimal. In terms of reviewing the STAR Program requirements as outlined in the test claim legislation and regulations, this does not appear to create a state-mandated cost. All coordinators will be fully trained on the legal requirements of the STAR Program. Since a school must comply with all applicable laws, and it would seem that reviewing the laws and regulations to ensure compliance would be within the existing responsibilities of a school. Thus, we believe that any cost associated with this portion of the bill would likely be minor and absorbable, and would not require a higher level of service and would not be reimbursable.

Activity B: Acquiring Test Materials, Supplies, and Equipment.

The contractor is responsible for producing all testing materials required for the STAR Program in sufficient quantities to test all required students (including a 15 percent overage), which is already provided for in the budget. To the extent that districts request additional material and/or services, such requests are voluntary on the part of the districts and would not be reimbursable.

Activity C: Pretest and Posttest Coordination.

The requirement to designate a STAR test site coordinator at each test site and a district coordinator would be reimbursable but should be offset by the amount provided in the budget. However, to the extent that a district or test site already has a coordinator, these costs should be minimal and should be offset by the amount provided in the budget. The requirement to exempt pupils from the STAR Program tests upon request of their parent or guardian would be reimbursable but should be offset by the amount provided in the budget. These costs will vary from district to district but should be minimal. Coordination of testing at the test site would be reimbursable but should be offset by the amount provided in the budget. DOF notes that during

the 1998 and 1999 STAR administrations, any district that chose to pre-identify test forms received $.15 per pupil to provide the information to the test publisher and any costs identified should be offset by the $.15 per pupil those districts received. Commencing with the 2000 STAR administration, all districts received $.32 per pupil as an incentive. Thus, the cost of this activity should not be claimed through the mandated claiming process.

Activity D: Test Administration

In its August 24, 2000 Statement of Decision, the Commission found that costs associated with teacher time are not reimbursable. Thus, this requirement would not be reimbursable, since districts already receive per pupil funding rate for up to 180 days (or its equivalent minutes) of instruction and the administration of the STAR falls within the time allotted for regular instruction.

Activities E: Reporting and Record Keeping

This requirement does not appear to be a higher level of service since the publisher provides individual reports for each student that may simply be placed in each pupil's records. Further, districts are already paid to keep records for all students as part of the normal course of operation. However, to the extent that districts choose to provide more information than is required by law, these costs would not be reimbursable. The reporting of district-wide, school-level, and class-level results to the school district's governing board or county office of education would be reimbursable but should be offset by the amount provided in the budget. The submission of a report on the STAR Program to the Superintendent of Public Instruction would be reimbursable but should be offset by the amount provided in the budget. According to the State Department of Education, the test publisher sends the results and test scores of the STAR Program directly to the department. The information identified in this activity is required to be submitted to the test publisher and not the department. Therefore, any costs to provide this information directly to the department should not be considered a state-mandated cost.

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

If you have any questions regarding this letter, please contact Michael Wilkening, Principal Program Budget Analyst at (916) 445-0328, or Jim Lombard, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Randall Baker for

Kathryn Radtkey-Gaither
Program Budget Manager

Attachment

Attachment A

DECLARATION OF DEPARTMENT OF FINANCE
CLAIM NO: CSM 97-TC-23

As requested in your letter of October 2, 2000, the Department of Finance has reviewed the Parameter and Guidelines, Standardized Testing and Reporting (CSM-97-TC-23), submitted by the San Diego Unified School District related to costs incurred under Chapter No. 828, Statutes of 1997.

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the CSM 97-TC-23 sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

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

Nov. 20, 2000
at Sacramento, CA

Jeannie Orpeza
Jeannie Orpeza

PROOF OF SERVICE

Test Claim Name: Standardized Testing and Reporting
Test Claim Number: CSM 97-TC-23

As requested in your letter of October 2, 2000, the Department of Finance has reviewed the Parameter and Guidelines, Standardized Testing and Reporting (CSM-97-TC-23), submitted by the San Diego Unified School District related to costs incurred under Chapter No. 828, Statutes of 1997.

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

On November 20, 2000, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

Mr. Joseph D. Mullender, Jr.
Attorney at Law
89 Rivo Alto Canal
Long Beach, CA 90803

DMG-MAXIMUS
Attention: Laurie McVay
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

E-8
Department of Education
School Business Services
Attention: Gerry Shelton
560 J Street, Suite 150
Sacramento, CA 95814

Mandated Cost Systems, Inc.
Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

San Diego Unified School District
Attention: James Cunningham
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

E-8
State Board of Education
Attention: Greg Geeting, Executive Director
721 Capitol Mall, Room 532
Sacramento, CA 95814

DMG-MAXIMUS
Attention: Allan Burdick
4320 Auburn Blvd., Suite 2000
Sacramento, CA 95814

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 95496

San Jose Unified School District
Attention: William A. Doyle
1153 El Prado Drive
San Jose, CA 95120

Loeb & Loeb
Attention: Anthony Murray
1000 Wilshire Blvd., 18th Floor
Los Angeles, CA 90017

Vavrinek Trine Day & Co., LLP
Attention: Mr. Andy Nichols
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Gold River, CA 95670

B-8
Mr. Paige Vorhies
State Controller's Office
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

B-8
Mr. Jim Spano
State Controller's Office
Division of Audits
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Sacramento, CA 95814

Mandate Resource Services
Attention: Harmeet Barkschat
8254 Heath Peak Place
Antelope, CA 95843

Vavrinek Trine Day & Co., LLP
Attention: Dean Getz, Director
12150 Tributary Point Drive, Suite 150
Gold River, CA 95670

Mr. Wayne Martin
Director of Budget and Accounting
Stockton Unified School District
701 North Madison Street
Stockton, CA 95202-1687

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 20, 2000 at Sacramento, California.

Jennifer Nelson

Jennifer Nelson

98-99

Item	Amount
the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the joint committee, or his or her designee, may in each instance determine.	
6110-109-0001—For local assistance, Department of Education (Proposition 98), Program 20.60—Gang Risk Intervention Program pursuant to Chapter 5.5 (commencing with Section 58730) of Part 31 of Division 4 of Title 2 of the Education Code	3,000,000
6110-111-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 10.10.006-School Apportionment-Transportation	2,000,000
Provisions:	
1. The funds appropriated by this item are for equalization of home-to-school transportation funding, pursuant to Section 44 of Chapter 928, Statutes of 1997.	
6110-111-0890—For local assistance, Department of Education, Elementary and Secondary Education Act, Title I—Program 20.10.056 Character Education Program, payable from the Federal Trust Fund	175,000
6110-112-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.60—Staff Development Day Buyout	195,000,000
Provisions:	
1. The funds appropriated by this item are available to buy back staff development days, pursuant to legislation enacted during the 1997–98 Regular Session that becomes operative after January 1, 1998, and on or before January 1, 1999.	
6110-112-0890—For local assistance, Department of Education, Program 20.60.036—Public Charter Schools, payable from the Federal Trust Fund	3,365,000
Provisions:	
1. Of the funds appropriated by this item, $200,000 is for transfer by the Controller to the Charter School Revolving Loan Fund.	
6110-113-0001—For local assistance, Department of Education (Proposition 98), for purposes of a pupil testing program	55,969,000
Schedule:	
(a) 20.70.030.001-Golden State Examination	10,882,000
(b) 20.70.030.002-Statewide Assessment	1,002,000

Item	Amount
(c) 20.70.030.004-Career Technical Assessment	800,000
(d) 20.70.030.005-Assessment Review and Reporting	3,585,000
(e) 20.70.030.006-STAR Program	39,700,000

Provisions:

1. The funds appropriated in this item shall be for the pupil testing program authorized by Chapter 5 (commencing with Section 60600) and Chapter 6 (commencing with Section 60800) of Part 33 of the Education Code, and Sections 4 and 5 of Chapter 975 of the Statutes of 1995, as amended by Chapters 69 and 920 of the Statutes of 1996, and for the pupil testing program (STAR Program) authorized under Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 of the Education Code, as amended by Chapter 828 of the Statutes of 1997.
3. Notwithstanding any other provision of law, any funds appropriated by this item, but not expended for development of a statewide assessment test in the 1998–99 fiscal year, are available for expenditure in the 1999–2000 fiscal year for that purpose.
4. Funds appropriated in Schedule (e) of this item for the STAR Program shall be available for STAR Program costs for the 1998–99 fiscal year. In addition, funds are available in augmentation of Item 6110-113-0001 of Section 2.00 of the Budget Act of 1997, as appropriated pursuant to Section 9 of Chapter 886 of the Statutes of 1997, provided that the State Department of Education certifies in writing to the Department of Finance that additional funds are necessary to cover STAR Program costs for the 1997–98 fiscal year and the Department of Finance determines that additional funds are warranted.
5. Primary language tests administered pursuant to subdivisions (f) and (g) of Section 60640 of the Education Code shall be subject to the reporting requirements specified in subdivisions (b), (c), (d), and (e) of Section 60641 of the Education Code.

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(c) 20.70.030.004-Career Technical Assessment 800,000
(d) 20.70.030.005-Assessment Review and Reporting 3,585,000
(e) 20.70.030.006-STAR Program 42,100,000
(f) 20.70.030.007-English Language Development Assessment 1,000,000

Provisions:

1. The funds appropriated in this item shall be for the pupil testing program authorized by Chapter 5 (commencing with Section 60600) and Chapter 7 (commencing with Section 60810) of Part 33 of the Education Code.
2. The funds appropriated in Schedule (e) include funds for primary language tests administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 of the Education Code.
3. The funds appropriated in Schedule (f) shall be available for administration of an English language development test meeting the requirements of Chapter 7 (commencing with Section 60810) of Part 33 of the Education Code.

6110-114-0001—For local assistance, Department of Education, (Proposition 98), for transfer to Section A of the State School Fund for allocation by the Controller, for reimbursement of claims received pursuant to Sections 42243.6 and 42247 of the Education Code (court-ordered desegregation) State Apportionments 504,993,000

Schedule:

(a) 10.10.018.005-Bakersfield Unified Elementary School District 5,289,000
(b) 10.10.018.010—Los Angeles Unified School District 372,320,000
(c) 10.10.018.015-San Bernardino Unified School District 11,854,000
(d) 10.10.018.020-San Diego Unified School District 47,115,000
(e) 10.10.018.025-San Francisco Unified School District 34,234,000
(f) 10.10.018.030-San Jose Unified School District 27,557,000
(g) 10.10.018.035-Stockton Unified School District 5,105,000
(h) 10.10.018.040-Palo Alto Unified School District 459,000

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(i) 10.10.018.050-Redwood City Elementary School District 42,000
(j) 10.10.018.055-San Mateo County Superintendent 70,000
(k) 10.10.018.060-Santa Clara County Office of Education 13,000
(l) 10.10.018.065-Sequoia High School District 352,000
(m) 10.10.018.070-Menlo Park City Elementary School District 1,000
(n) 10.10.018.075-Ravenswood City Elementary School District 64,000
(o) 10.10.018.080-Las Lomitas 14,000
(p) 97.20.011.001-Payment for Audit Cost Claims 504,000

Provisions:

1. Of the funds appropriated in this item, $7,214,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 1.47 percent and $7,021,000 is for the purpose of providing a cost-of-living adjustment (COLA) at a rate of 1.41 percent.
2. Funds appropriated in this item are for reimbursement of amounts necessary to pay costs of desegregation programs initially mandated by the courts, as defined in Section 2205 of the Revenue and Taxation Code, pursuant to any final court order issued after January 1, 1978, and for the costs of audits as required by Provision 4 of this item.
3. Before submittal to the Controller for payment, school districts shall subject their past year actual claims to audit, in accordance with standards utilized by the Controller in prior years for the audit of past year actual desegregation claims, to ensure that the claims comply with the requirements of Sections 42243.6, 42247.1, 42247.3, and 42247.4 of the Education Code. School districts may contract with the Controller for the performance of those audits. All past year actual claims submitted to the Controller for payment shall be accompanied by any reports issued by the auditing entity, unless the auditing entity was the Controller.
4. The Controller shall reimburse only those past year actual claims that conform with the requirements set forth in Provision 3.
5. The Controller shall allocate funds appropriated in this item in accordance with the provisions of

Item Amount

of the joint committee, or his or her designee, may in each instance determine.

6110-108-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.60.020.002—Tenth Grade Counseling pursuant to Section 48431.7 of the Education Code 9,749,000

Provisions:

1. Of the funds appropriated in this item, $139,000 is for the purpose of providing an adjustment for increases in enrollment at a rate of 1.47 percent and $136,000 is for the purpose of providing a cost-of-living adjustment at a rate of 1.41 percent.

6110-109-0001—For local assistance, Department of Education (Proposition 98), Program 20.60-Gang Risk Intervention Program pursuant to Chapter 5.5 (commencing with Section 58730) of Part 31 of Division 4 of Title 2 of the Education Code 3,000,000

6110-110-0001—For local assistance, Department of Education (Proposition 98), Program 20.60.110—Reader Service for Blind Teachers, for transfer to the Reader Employment Fund established by Section 45371 for the purposes of Section 44925 of the Education Code 295,000

Provisions:

1. Of the funds appropriated in this item, $4,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 1.47 percent and $4,000 is for the purpose of providing a cost-of-living adjustment (COLA) at a rate of 1.41 percent for the program.

6110-111-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, ~~Program 10.10.006~~—Home to School Transportation, pursuant to Article 10 (commencing with Section 41850) of Chapter 5 of Part 24 of the Education Code and Small School District Transportation, pursuant to Article 4.5 (commencing with Section 42290) of Chapter 7 of Part 24 of the Education Code 459,888,000

Schedule:

(a) 10.10. ~~009~~ 006 -Pupil Transportation 455,893,000

(b) 10.10.008-Small School District Bus Replacement 3,995,000

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Provisions:

1. Of the funds appropriated in this item, $6,570,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 1.47 percent and $6,395,000 is for the purpose of providing a cost-of-living adjustment at a rate of 1.41 percent.

6110-111-0890—For local assistance, Department of Education, Elementary and Secondary Education Act, Title I—Program 20.10.056 Character Education Program, payable from the Federal Trust Fund . 175,000

6110-112-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund, Program 20.60-Instructional Time and Staff Development Reform Program 225,146,000

Provisions:

1. The funds appropriated in this item are available for the purposes of the Instructional Time and Staff Development Reform Program established by Article 7.5 (commencing with Section 44579) of Chapter 3 of Part 25 of the Education Code.
2. Of the funds appropriated in this item, $3,280,000 is for the purpose of providing a cost-of-living adjustment for the Instructional Time and Staff Development Reform Program, in lieu of the amount that would otherwise be provided pursuant to statute.

6110-112-0890—For local assistance, Department of Education, Program 20.60.036-Public Charter Schools, payable from the Federal Trust Fund 16,560,000

Provisions:

1. The State Department of Education shall file an amendment to California's Public Charter School grant application with the United States Department of Education to change the maximum amount that a charter school may receive for an implementation grant from $150,000 to $250,000.

6110-113-0001—For local assistance, Department of Education (Proposition 98), for purposes of a pupil testing program 62,669,000

Schedule:

(a) 20.70.030.001-Golden State Examination 14,182,000

(b) 20.70.030.002-Statewide Assessment 1,002,000

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Provisions:

1. Of the funds appropriated in this item, $6,669,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 1.45 percent and $14,789,000 is for the purpose of providing a cost-of-living adjustment at a rate of 3.17 percent.

6110-112-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund, Program 20.60-Instructional Time and Staff Development Reform Program 246,824,000

Provisions:

1. The funds appropriated in this item are available for the purposes of the Instructional Time and Staff Development Reform Program established by Article 7.5 (commencing with Section 44579) of Chapter 3 of Part 25 of the Education Code.
2. Of the funds appropriated in this item, $7,487,000 is for the purpose of providing a cost-of-living adjustment for the Instructional Time and Staff Development Reform Program, in lieu of the amount that would otherwise be provided pursuant to statute.

6110-112-0890—For local assistance, Department of Education, Program 20.60.036-Public Charter Schools, payable from the Federal Trust Fund..... 12,632,000

6110-113-0001—For local assistance, Department of Education (Proposition 98), for purposes of California's pupil testing program..... 112,392,000

Schedule:

(a) 20.70.030.001-Golden State Examination 14,182,000
(b) 20.70.030.004-Career Technical Assessment 800,000
(c) 20.70.030.005-Assessment Review and Reporting 3,585,000
(d) 20.70.030.006-STAR Program 62,325,000
(e) 20.70.030.007-English Language Development Assessment 16,100,000
(f) 20.70.030.008-High School Exit Examination..... 15,400,000

Provisions:

1. The funds appropriated in this item shall be for the pupil testing programs authorized by Chapter 5 (commencing with Section 60600), Chapter 7 (commencing with Section 60810), and Chapter 8

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(commencing with Section 60850) of Part 33 of the Education Code.

2. The funds appropriated in Schedule (d) include funds for primary language tests administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 of the Education Code.
3. The funds appropriated in Schedule (e) shall be available for administration of an English language development test meeting the requirements of Chapter 7 (commencing with Section 60810) of Part 33 of the Education Code.
5. It is the intent of the Legislature that the State Department of Education develop a plan to streamline existing programs to eliminate duplicative tests and minimize the instructional time lost to test administration. The State Department of Education shall ensure that all statewide tests meet industry standards for validity and reliability.

6110-114-0001—For local assistance, Department of Education, (Proposition 98), for transfer to Section A of the State School Fund for allocation by the Controller, for reimbursement of claims received pursuant to Sections 42243.6 and 42247 of the Education Code (court-ordered desegregation) State Apportionments 528,554,000

Schedule:

(a) 10.10.018.005-Bakersfield Unified Elementary School District..... 5,536,000
(b) 10.10.018.010-Los Angeles Unified School District.....389,693,000
(c) 10.10.018.015-San Bernardino Unified School District..... 12,407,000
(d) 10.10.018.020-San Diego Unified School District..... 49,313,000
(e) 10.10.018.025-San Francisco Unified School District..... 35,831,000
(f) 10.10.018.030-San Jose Unified School District..... 28,843,000
(g) 10.10.018.035-Stockton Unified School District..... 5,343,000
(h) 10.10.018.040-Palo Alto Unified School District..... 481,000
(i) 10.10.018.050-Redwood City Elementary School District..... 44,000
(j) 10.10.018.055-San Mateo County Superintendent..... 73,000

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funds. Additionally, $18,889,000 is for the purpose of providing a cost-of-living adjustment at a rate of 3.87 percent.

6110-112-0001—For local assistance, Department of Education (Proposition 98), for transfer by the Controller to Section A of the State School Fund, Program 20.60.017-Instructional Time and Staff Development Reform Program 224,157,000

Provisions:

1. The funds appropriated in this item are available for the purposes of the Instructional Time and Staff Development Reform Program established by Article 7.5 (commencing with Section 44579) of Chapter 3 of Part 25 of the Education Code.
2. Of the funds appropriated in this item, $12,333,000 is for the purpose of providing a cost-of-living adjustment at a rate of 3.87 percent for the Instructional Time and Staff Development Reform Program, in lieu of the amount that would otherwise be provided pursuant to statute, resulting in a daily rate of $293.42 for teachers and $152.14 for classified paraprofessionals.
3. It is the intent of the Legislature to fund deficiencies that may result in this program during the 2001–02 fiscal year.

6110-112-0890—For local assistance, Department of Education, Program 20.60.036-Public Charter Schools, payable from the Federal Trust Fund 12,632,000

6110-113-0001—For local assistance, Department of Education (Proposition 98), for purposes of California's pupil testing program 126,477,000

Schedule:

(1) 20.70.030.001-Golden State Examination	14,937,000
(2) 20.70.030.004-Career Technical Assessment	843,000
(3) 20.70.030.005-Assessment Review and Reporting	3,781,000
(4) 20.70.030.006-STAR Program	65,643,000
(5) 20.70.030.007-English Language Development Assessment	14,474,000
(6) 20.70.030.008-High School Exit Examination	14,799,000
(7) 20.70.030.009-Test Development: STAR and High School Exit Exam	12,000,000

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Provisions:

1. The funds appropriated in this item shall be for the pupil testing programs authorized by Chapter 5 (commencing with Section 60600), Chapter 7 (commencing with Section 60810), and Chapter 8 (commencing with Section 60850) of Part 33 of the Education Code.
2. The funds appropriated in Schedule (4) include funds for primary language tests administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 of the Education Code.
3. The funds appropriated in Schedule (5) shall be available for administration of an English language development test meeting the requirements of Chapter 7 (commencing with Section 60810) of Part 33 of the Education Code.
4. The funds appropriated in Schedule (6) include funds for the administration of the HSEE pursuant to Chapter 8 (commencing with Section 60850) of Part 33 of the Education Code.
5. Of the funds appropriated in this item, $1,132,000 is for the purpose of providing an adjustment for increases in enrollment at a rate of 1.40 percent and $3,797,000 is for the purpose of providing a cost-of-living adjustment at a rate of 3.87 percent.
6. The funds appropriated in Schedule (7) shall be available for test item development for the STAR and High School Exit Examination programs during the 2001–02 fiscal year. The test items developed with these funds shall make progress in aligning these exams with the State Board of Education-approved academic content standards and in ensuring that these exams are valid and reliable as measured by industry standards.
9. It is the intent of the Legislature that the State Department of Education develop a plan to streamline existing programs to eliminate duplicative tests and minimize the instructional time lost to test administration. The State Department of Education shall ensure that all statewide tests meet industry standards for validity and reliability.
10. The State Board of Education shall annually establish the amount of funding to be apportioned to school districts for the English Language Development Assessment and the High School Exit Examination. The amount of funding to be ap-

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portioned per test shall not be valid without the approval of the Department of Finance.

6110-116-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.60.030-School Improvement Programs, pursuant to Chapter 6 (commencing with Section 52000) of Part 28 of the Education Code 418,471,000

Schedule:

(1) 20.60.030.010-For the purposes of making allowances for kindergarten and grades 1 to 6, inclusive 348,129,000

(2) 20.60.030.020-For the purpose of making allowances for grades 7 to 12, inclusive 70,342,000

Provisions:

1. From the funds appropriated in Schedule (2), the State Department of Education shall allocate $31.71 per unit of average daily attendance (ADA) generated by pupils enrolled in grades 7 and 8 to those school districts that received School Improvement Grants in the 1989–90 fiscal year at a rate of $30 per unit of ADA generated by pupils enrolled in grades 7 and 8.
2. Of the funds appropriated in Schedule (1) of this item, $687,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 0.21 percent. If growth funds are insufficient, the State Department of Education may adjust the per-pupil growth rates to conform to available funds. Additionally, $12,971,000 is for the purpose of providing a cost-of-living adjustment at a rate of 3.87 percent.
3. Of the funds appropriated in Schedule (2) of this item, $1,468,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 2.22 percent. If growth funds are insufficient, the State Department of Education may adjust the per-pupil growth rates to conform to available funds. Additionally, $2,621,000 is for the purpose of providing a cost-of-living adjustment at a rate of 3.87 percent.

6110-117-0001—For local assistance, State Department of Education, Program 10.70-Vocational Education, in lieu of the amount that otherwise would be appropriated pursuant to subdivision (b) of Section 19632 of the Business and Professions Code 562,000

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Provisions:

1. Of the funds appropriated in this item, $50,000 shall be available to contract with the California Association of Student Councils for the purpose of providing leadership development and training to pupils in grades 3 to 12, inclusive.

6110-119-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.40.060-Educational Services for Foster Youth pursuant to Chapter 11.3 (commencing with Section 42920) of Part 24 of the Education Code 8,464,000

Provisions:

1. Of the funds appropriated in this item, $113,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 1.40 percent. If growth funds are insufficient, the State Department of Education may adjust the per-pupil growth rates to conform to available funds. Additionally, $315,000 is for the purpose of providing a cost-of-living adjustment (COLA) at a rate of 3.87 percent.

6110-120-0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund Program 20.40.100-Pupil Dropout Prevention Programs established pursuant to Article 6 (commencing with Section 52890) and Article 7 (commencing with Section 52900) of Chapter 12 of Part 28, Article 7 (commencing with Section 54720) of Chapter 9 of Part 29, and Chapter 3.5 (commencing with Section 58550) of Part 31 of, the Education Code 21,167,000

Provisions:

1. The following provisions apply to pupil dropout prevention programs receiving funds pursuant to this item:
   (a) Prior to hiring an outreach consultant with funds appropriated in this item, a school or school district shall have adopted a plan, that includes a statement describing the specific duties of the outreach consultant and that has been approved by the Superintendent of Public Instruction. This duty statement shall require that the outreach consultant perform only activities that directly benefit "high-risk pupils" as defined in subdivision (c) of Section 54721 of the Education Code. Each out-

ORIGINAL

PUBLIC HEARING

COMMISSION ON STATE MANDATES

RECEIVED
NOV 08 2001
COMMISSION ON
STATE MANDATES

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TIME: 9:41 a.m.

DATE: Thursday, October 25, 2001

PLACE: Commission on State Mandates
State Capitol, Room 126
Sacramento, California

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REPORTER'S TRANSCRIPT OF PROCEEDINGS

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Reported By: DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSION ON STATE MANDATES

ANNETTE PORINI, Chair
Representative for B. TIMOTHY GAGE, Director
State Department of Finance

JOHN HARRIGAN
Representative for KATHLEEN CONNELL
State Controller

HEATHER A. HALSEY
Representative for STEVEN A. NISSEN, Director
State Office of Planning and Research

JOHN LAZAR
City Council Member
Turlock City Council

WILLIAM SHERWOOD, Vice Chair
Representative for PHILIP ANGELIDES
State Treasurer

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

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COMMISSION STAFF

PAULA HIGASHI, Executive Director

ELLEN FISHMAN, Staff Counsel

CAMILLE SHELTON, Staff Counsel

KATHERINE TOKARSKI, Staff Counsel

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I N D E X

Proceedings **Page**

IV. Hearings and Decisions, Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 7

C. Adoption of Proposed Statement of Decisions to Dismiss Withdrawn Test Claims

Item 5 Special Education: Preschool Transportation Programs for Ages 3-5 Not Requiring Intensive Services
CSM 3986
North Region SELPA (Alameda Unified School District, Administrative Unit), Claimant
County of Tuolumne, Claimant
(Consent Calendar Item)

Item 6 Special Education for Ages 3, 4, 5, and 18, 19, 20, and 21
CSM 3986
Long Beach Unified School District, Claimant
(Consent Calendar Item)

V. Informational Hearing Pursuant to California Code of Regulations, Title 2, Chapter 2.5, Article 8

A. Adoption of Proposed Parameters and Guidelines

Item 7 Standardized Testing and Reporting
97-TC-23
San Diego Unified School District, Claimant . . . . . .
(This item was postponed.)

B. Adoption of Amendment to Parameters and Guidelines

Item 8 Mandate Reimbursement Process
CSM 4485
(Consent Calendar Item)

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting by computer.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this seventh day of November 2001.

Daniel P. Feldhaus

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California
October 25, 2001

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Member William Sherwood
Representative of the State Treasurer
Member Heather Halsey
Representative of the Director of the Office of Planning and Research
Member John Harrigan
Representative of the State Controller
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member
Vacant: Public Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:41 a.m. Paula Higashi, Executive Director to the Commission, introduced Paul Starkey, the Commission's new Chief Legal Counsel.

APPROVAL OF MINUTES

Item 1 October 18, 2001

Upon motion by Member Harrigan and second by Member Sherwood, the minutes were unanimously adopted.

PROPOSED CONSENT CALENDAR

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

PROPOSED STATEMENTS OF DECISION TO DISMISS WITHDRAWN TEST CLAIMS

Item 5 *Special Education: Preschool Transportation Programs For Ages 3-5 Not Requiring Intensive Services* - CSM 3986
North Region SELPA (Alameda Unified School District, Administrative Unit), Claimant
Education Code Sections 56441.14 and 56448
Statutes of 1987, Chapter 311; Statutes of 1990, Chapter 184
Statutes of 1992, Chapter 1061

Item 6 *Special Education for Ages 3, 4, 5, and 18, 19, 20, and 21* - CSM 3986
Long Beach Unified School District, Claimant
Education Code Section 56026, as added and amended by Statutes of 1980, Chapter 797 and 1353; Statutes of 1987, Chapter 311; Statutes of 1988, Chapter 35; Statutes of 1991, Chapter 223; Statutes of 1992, Chapters 1360 and 1361; Statutes of 1993, Chapter 1296; Statutes of 1995, Chapter 530

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF AMENDMENT TO PARAMETERS AND GUIDELINES

Item 8 *Mandate Reimbursement Process* - CSM-4485
Statutes of 1975, Chapter 486; Statutes of 1984, Chapter 1459
Statutes of 1995, Chapter 303 (Budget Act of 1995); Statutes of 1996, Chapter 162 (Budget Act of 1996); Statutes of 1997, Chapter 282 (Budget Act of 1997); Statutes of 1998, Chapter 324 (Budget Act of 1998); Statutes of 1999, Chapter 50 (Budget Act of 1999); Statutes of 2000, Chapter 52 (Budget Act of 2000); Statutes of 2001, Chapter 106 (Budget Act of 2001)

Member Steinmeier moved for adoption of the consent calendar. With a second by Member Sherwood, the consent calendar was unanimously adopted.

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7

TEST CLAIMS

Item 2 *Annual Parent Notification 1998 and 1999 Statutes,* 99-TC-09; 00-TC-12
Education Code Sections 48980 and 49063
San Juan Unified School District and San Jose Unified School District, Claimants
Statutes of 1998, Chapters 846 and 1031
Statutes of 1999-2000, First Extraordinary Session, Chapter 1

Katherine Tokarski, Graduate Legal Assistant, introduced this item. She noted that the claimants, San Juan and San Jose Unified School Districts, each submitted claims alleging reimbursable costs mandated by the state for amendments to the Education Code, directing school districts to provide additional annual parent notifications. The two claims were consolidated for hearing.

Ms. Tokarski stated that the test claim legislation adds several items to the annual parent notification activities when compared to prior law, requiring school districts to incur increased costs relating to copying and mailing. She noted that staff did not find evidence to support the Department of Finance's assertion that the new notification regarding the High School Exit Exam is funded through the annual Budget Act. She explained that appropriations regarding the High School Exit Exam relate to the development and administration of the exam itself, not annual parent notification.

Furthermore, Ms. Tokarski disagreed with the Department of Finance's argument that the new notification regarding advanced placement exam fees concerns a voluntary grant program, and thus, is not reimbursable. She explained that all school districts are statutorily required to provide information about the advanced placement exam fee subsidy and their annual notification to the parents or guardians of all their students, whether or not the school district utilizes the program. Therefore, staff concluded that the test claim legislation requires new annual parent notification activities resulting in a reimbursable state mandate.

Parties were represented as follows: Keith Petersen, representing the San Juan Unified School District and San Jose Unified School District; Carol Berg, representing the Education Mandated Cost Network; and Mohammad Wardak and Mike Wilkening, representing the Department of Finance.

Mr. Petersen concurred with the staff analysis. He added that it was consistent with the prior two test claims.

Dr. Berg supported the staff recommendation.

Mr. Wilkening noted that the Department of Finance now concurs with staff's recommendation regarding the notice of exam fees for voluntary programs. However, regarding notification for the High School Exit Exam, he maintained that there is funding in the annual Budget Act to cover the costs of the notification.

Member Steinmeier asked Mr. Petersen for technical clarification on small district claims. Mr. Petersen provided that clarification.

Member Steinmeier made a motion to approve the staff analysis. With a second by Member Lazar, the motion carried unanimously.

Item 3 *Eastview Optional Attendance Area*, CSM 99-TC-01
Palos Verdes Peninsula Unified School District, Claimant
Statutes of 1998, Chapter 868

Item 3 was postponed at the request of the claimant.

ADOPTION OF PROPOSED STATEMENT OF DECISION ON UNDISPUTED TEST CLAIM

Item 4 *Presidential Primaries 2000,* 99-TC-04
County of Tuolumne, Claimant
Elections Code Sections 15151 and 15375
Statutes of 1999, Chapter 18

Ellen Fishman, Commission Counsel, introduced this item. She noted that the test claim legislation relates to the manner in which presidential primary votes are counted and transmitted to the Secretary of State. She added that the test claim legislation requires local election officials to transmit both semi-final and final election results for presidential primaries in two separate tallies to the Secretary of State: First, the total number of votes each candidate receives; and second, the number of votes each candidate receives from registered voters of each political party and from the "declines to state" voters. Staff found that the test claim

legislation constitutes a new program or higher level of service and imposes a reimbursable state-mandated program on local agencies.

Parties were represented as follows: Allan Burdick, representing the County of Tuolumne and the California State Association of Counties; Timothy Johnson, Auditor-Controller Clerk and Registrar of Voters for the County of Tuolumne; and Tom Lutzenberger and Amber Pearce, representing the Department of Finance.

Chairperson Porini confirmed with the parties that this was an undisputed claim. Mr. Burdick agreed. Ms. Pearce added that she concurred with the staff analysis; however, she had concerns to address in the parameters and guidelines regarding what costs are reimbursable.

Hearing no further comments, Member Lazar moved for approval of staff's recommendation to approve the test claim and adopt the proposed Statement of Decision, and authorize staff to complete the proposed Statement of Decision by adding the missing information. With a second by Member Sherwood, the motion carried unanimously.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8

ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

Item 7 *Standardized Testing and Reporting,* 97-TC-23
San Diego Unified School District, Claimant
Education Code Sections 60607, et al
Statutes of 1997, Chapter 828
Title 5, California Code of Regulations,
Sections 850-874

Item 7 was postponed at the request of the claimant.

EXECUTIVE DIRECTOR'S REPORT

Item 9 Workload, Legislation, Next Agenda

Ms. Higashi noted the following:

- *Legislation.* The Bureau of State Audits commenced its audit of the *School Bus Safety II* mandate. Staff, with the Commission and the State Controller's Office, met with the auditors to discuss the scope of the audit. The Commission has provided them a copy of the administrative record for both *School Bus Safety I* and *School Bus Safety II.*
- *Next Hearing.* The November 29, 2001 hearing will be moved to December, possibly December 12, 2001. The date will be confirmed.
- *Personnel.* Kathy Lynch, Commission Staff Counsel, accepted another position with the Attorney General's Office.