BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR DECISION ON: Education Code Sections 35256.1 and 41409.3, added by Statutes 1989, Chapter 1463; Education Code Section 41409, as amended by Statutes 1992, Chapter 759; Education Code Section 33126, as amended by Statutes 1993, Chapter 1031, Statutes 1994, Chapter 824; and Education Code Section 35258, as added by Statutes 1997, Chapter 918. Directed by Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. 2855), Effective January 1, 2005.	Case No.: 04-RL-9721-11 ***School Accountability Report Cards I*** NOTICE OF STATEMENT OF DECISION

TO: Bakersfield City School District
Sweetwater Union High School District
Department of Education
Department of Finance
State Controller's Office
Legislative Analyst
Interested Parties and Legislative Committees

Notice of Statement of Decision

The final Statement of Decision is being posted to the Commission's website:

http://www.csm.ca.gov/recon.html/

Parameters and Guidelines

Commission staff will draft proposed amendments to the Parameters and Guidelines and issue for comment prior to scheduling for hearing.

If you have any questions regarding this matter, please contact Cathy Cruz, Program Analyst, at (916) 323-3562.

Dated: August 4, 2005

Paula Higashi

PAULA HIGASHI, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON: Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463; Statutes 1992, Chapter 759; Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824; Statutes 1997, Chapter 918; Directed By Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. 2855), Operative January 1, 2005.	Case No.: (04-RL-9721-11) *School Accountability Report Cards* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted on July 28, 2005*)

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

Paula Higashi

PAULA HIGASHI, Executive Director

August 4, 2005

Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

RECONSIDERATION OF PRIOR STATEMENT OF DECISION ON:	No. 04-RL-9721-11
Education Code Sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3; Statutes 1989, Chapter 1463, Statutes 1992, Chapter 759, Statutes 1993, Chapter 1031; Statutes 1994, Chapter 824 and Statutes 1997, Chapter 918;	*School Accountability Report Cards*
Test Claim No: 97-TC-21;	STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7
Directed By Statutes 2004, Chapter 895, Section 18 (Assem. Bill No. 2855) ,	*(Adopted on July 28, 2005)*
Operative January 1, 2005.	

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard this test claim reconsideration during a regularly scheduled hearing on May 26, 2005. The following interested parties provided oral testimony: Abe Hajela, with School Innovations and Advocacy; Jai Sookprasert, with the California School Employees Association; Robert Miyashiro, with the Education Mandated Cost Network; Brent McFadden, with the Education Coalition and the Association of California School Administrators; Richard Hamilton, with the California School Boards Association; and Sandra Thornton, with the California Teachers Association. Lenin Del Castillo and Pete Cervinka appeared on behalf of the Department of Finance. The motion to adopt the staff analysis resulted in a tie vote.

The Commission reheard and decided this test claim reconsideration during a regularly scheduled hearing on July 28, 2005. The following interested parties provided oral testimony: Abe Hajela, with School Innovations and Advocacy; Robert Miyashiro, with the Education Mandated Cost Network; Richard Hamilton, with the California School Boards Association; and Estelle Lemieux, with the California Teachers Association. Lenin Del Castillo and Pete Cervinka appeared on behalf of the Department of Finance.

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

The Commission adopted the staff analysis, denying the reconsidered portions of the test claim, by a vote of 3-2.

BACKGROUND

The California voters approved Proposition 98, effective November 9, 1988. The proposition amended article XVI, section 8 of the California Constitution, including adding subdivision (e), as follows:

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

The proposition also added Education Code sections 33126 and 35256 concerning School Accountability Report Cards.

Original Decision: *School Accountability Report Cards*

School Accountability Report Cards (97-TC-21), was a test claim heard and approved by the Commission. The claim, filed on December 31, 1997, by Bakersfield City School District and Sweetwater Union High School District, alleged a reimbursable state mandate for Education Code sections 33126, 35256, 35256.1, 35258, and 41409.3, as added or amended by Statutes 1989, chapter 1463; Statutes 1992, chapter 759; Statutes 1993, chapter 1031; Statutes 1994, chapter 824; and Statutes 1997, chapters 912 and 918.

The following findings were made by the Commission in the *School Accountability Report Cards* Statement of Decision, adopted April 23, 1998:

> The Commission finds the following to be state mandated activities and therefore, reimbursable under section 6, article XIII B of the California Constitution and Government Code section 17514. Reimbursement would include direct and indirect costs to compile, analyze, and report the specific information listed below in a school accountability report card.
>
> The Commission concludes that reimbursement for inclusion of the following information in the school accountability report card begins on July 1, 1996:
>
> - Salaries paid to schoolteachers, school site principals, and school district superintendents.
> - Statewide salary averages and percentages of salaries to total expenditures in the district's school accountability report card.
> - "The degree to which pupils are prepared to enter the work force."
> - "The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per year required by state law, separately stated for each grade level."
> - "The total number of minimum days, . . . , in the school year."
> - Salary information provided by the Superintendent of Public Instruction.
>
> The Commission concludes that reimbursement for inclusion of the following information in a school accountability report card begins on January 1, 1998:

- Results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment.
- The average verbal and math Scholastic Assessment Test (SAT) scores for schools with high school seniors to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period.
- The one-year dropout rate for the schoolsite over the most recent three-year period.
- The distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period.
- The total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period.
- Any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period.
- The annual number of schooldays dedicated to staff development for the most recent three-year period.
- The suspension and expulsion rates for the most recent three-year period.

The Commission concludes that reimbursement for posting and annually updating school accountability report cards on the Internet, if a school district is connected to the Internet, begins on January 1, 1998.

The Commission adopted parameters and guidelines for *School Accountability Report Cards* at the August 20, 1998 hearing.

The reconsideration was initially heard at the May 26, 2005 Commission hearing, and resulted in a 2-2 tie vote; thus no decision was adopted. A notice was issued granting the opportunity for any party to file comments on the issues under reconsideration and the item was continued to the July 28, 2005 hearing, pursuant to the tie vote provisions of the Commission's regulations. (Cal. Code Regs., tit. 2, § 1182, subd. (c)(1).)

School District and Interested Parties' Positions

In December 2004, interested parties and state agencies were asked to file briefs on the issues under reconsideration. On May 9, 2005, the Commission received comments on the draft staff analysis from Sweetwater Union High School District, stating complete disagreement with the conclusions; asserting that the test claim legislation imposed a higher level of service on school districts. The district's specific comments will be discussed in the analysis below.

On May 25, 2005, a late filing was received from the Education Management Group, disputing the conclusions of the staff analysis, particularly the findings recommended under the "costs mandated by the state" portion of the analysis.

At the May 26, 2005 Commission hearing, the following interested parties provided oral testimony: Abe Hajela, with School Innovations and Advocacy; Jai Sookprasert, with the California School Employees Association; Robert Miyashiro, with the Education Mandated Cost Network; Brent McFadden, with the Education Coalition and the Association of California School Administrators; Richard Hamilton, with the California School Boards Association; and Sandra Thornton, with the California Teachers Association.

School Innovations and Advocacy outlined two issues: 1) whether school districts must prove that they use property tax revenues, and 2) whether the new requirements of the school accountability report card are a higher level of service. Regarding the first issue, School Innovations and Advocacy argued that school districts cannot prove that local property tax revenues are used to comply with specific mandates because the funds are commingled with other funds received through Proposition 98. School Innovations and Advocacy added that school district accounting procedures are largely regulated by the state, and the state does not require that funds be segregated. Unlike the case cited in staff's analysis, School Innovations and Advocacy contended that in this case, there is no specific appropriation or funding stream for the program. School Innovations and Advocacy maintained that nothing new happened for the Commission to believe that a new interpretation of the law is necessary.

With regard to the second issue and staff's position that the new requirements are minimal, School Innovations and Advocacy asserted that there needs to be a dollar amount or percentage standard that provides guidance because the program could be further amended in the future.[1]

The California School Employees Association associated themselves with the comments made by School Innovations and Advocacy. The California School Employees Association disputed the argument that changes are minimal if school districts must break funds down to property tax revenues.[2]

Education Mandated Cost Network addressed the *de minimis* nature of the claim, arguing that while staff believes that incidental duties do not require reimbursement, staff did not establish a minimum dollar amount. Education Mandated Cost Network noted that the law specifies a thousand-dollar threshold for filing a reimbursement claim and that the Commission adopted a statewide cost estimate of $1.7 million for this program, and added that this estimate was the thirteenth largest of the 30 estimates adopted in 2002-2003.

Education Mandated Cost Network clarified that Proposition 98 does not appropriate money for any program. Rather, it establishes a minimum funding guarantee level for which the Legislature then makes appropriations to specific programs. Thus, Education Mandated Cost Network asserted that it is not sufficient to reference the Proposition 98 guarantee and conclude that the minimum requirements fund a particular program because an appropriation must be made to fund the program. Education Mandated Cost Network argued that the language of Proposition 98 is not specifically intended for the *School Accountability Report Card* program and concluded

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[1] May 26, 2005 Commission Hearing Transcript, pages 136-140.

[2] *Id.* at pages 140-141.

that the staff analysis has not overcome the original findings of the Commission. Education Mandated Cost Network strongly urged the Commission to reject the staff analysis and to let the 1998 decision stand.[3]

The Education Coalition and the Association of California School Administrators associated their organizations "with the remarks made by the previous three speakers."[4]

The California Teachers Association agreed with all the previous comments and additionally urged the Commission "to oppose any test claim recommendation that would affect the funding source or perpetuate the under-funding of funds for the California schools."[5]

The California School Boards Association concurred with the previous comments, stating that the staff analysis does not address Government Code section 17556, subdivision (f), "which speaks of imposing duties that are expressly included in a ballot measure."[6]

Following the May hearing, another comment period was granted to the parties, including a one-week extension of time. Comments were received on July 8, 2005, from School Innovations & Advocacy. Those comments argue that all legislative amendments to requirements to the School Accountability Report Card are reimbursable if they were not "expressly included in a ballot measure;" that Proposition 98 funds should not be considered "program funds" required to be used as an offset to legislative amendments to School Accountability Report Cards; and that application of the 2003 *County of Los Angeles* decision requires "an analysis of the costs of the various legislative mandates related to the SARC [School Accountability Report Card]."

On July 8, 2005, Los Angeles Unified School District submitted a letter joining in the comments from School Innovations & Advocacy. Commission staff received comments from the California School Boards Association/Education Legal Alliance on July 11, 2005, and from Education Mandated Cost Network on July 18, 2005, explaining the organizations' oppositions to the staff analysis and also joining in the filing from School Innovations & Advocacy.

A late filing dated July 25, 2005, was received from School Innovations and Advocacy. The letter argues the Commission cannot consider recent amendments to Government Code section 17556, subdivision (f), when making its decision on reconsideration, because Assembly Bill (AB) 2855 only explicitly requests reconsideration "in light of federal statutes enacted and state court decisions rendered since these statutes were enacted."

State Agency Position

On May 6, 2005, the Commission received comments on the draft staff analysis from Department of Finance stating agreement with the draft staff analysis, and noting that the "administration intends to pursue legislation requiring the Commission to also reconsider the portion of this test claim related to Chapter 912, Statutes of 1997." Department of Finance concluded, "it appears that the omission of this statutory reference from AB 2855 was inadvertent."

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[3] *Id.* at pages 141-144.

[4] *Id.* at page 144.

[5] *Ibid.*

[6] *Id.* at page 145.

Lenin Del Castillo and Pete Cervinka appeared on behalf of the Department of Finance at the May 26, 2005 Commission hearing; they provided testimony continuing to support the staff analysis and recommendation. Department of Finance disagreed with the comments of the interested persons and argued that Government Code section 17556, subdivision (f), specifically states that ballot measures adopted by the voters on a statewide initiative do not impose reimbursable mandates for duties expressly included in the ballot measure. Department of Finance explained that the School Accountability Report Card is not limited to the provisions originally set out in the Education Code because the electorate recognized that the details of the model report card are subject to change and districts are required to comply with those changes. Therefore, Department of Finance asserted that this program is not reimbursable as it was a statewide ballot measure.[7]

No comments on the reconsideration were received from other state agencies.

Legislative Analyst's Office Report

On March 22, 2004, the Legislative Analyst's Office distributed a report entitled *Proposition 98 Mandates, Part III.*[8] This report to the Legislature discusses recommendations related to the *School Accountability Report Cards* mandate, as follows:

> Recommend the committee amend state law to waive reimbursement for mandates when federal law is changed, requiring activities similar to the state mandate.
>
> The federal No Child Left Behind (NCLB) Act requires report cards similar to the one required by the state. Since the state requirement was enacted first, however, state law directs CSM to recognize as reimbursable all mandated costs of the report cards.
>
> This law unnecessarily disadvantages the state. The state could eliminate the mandate, for instance, and schools would still be required under federal law to issue school report cards.
>
> In addition, NCLB provided substantial increases in district funding to pay for the new requirements of the act. Districts, therefore, have received funding for the cost of mandates in the new law.[9]

Following release of this report, AB 2855, in addition to ordering the reconsideration of the *School Accountability Report Cards* Statement of Decision, also amended Government Code section 17556, subdivision (c), to provide that when a "statute or executive order imposes a requirement that is mandated by a federal law or regulation," federal mandates enacted before *or after* the state law precludes a finding of costs mandated by the state.

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[7] May 26, 2005 Commission Hearing Transcript, pages 145-149.

[8] *Proposition 98 Mandates, Part III*, at <http://www.lao.ca.gov/handouts/education/2004/Mandates_Part_III_032204.pdf> [as of May 10, 2005.]

[9] *Id.* at page 4.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[10] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[11] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[12] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[13] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[14]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[15] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[16] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[17]

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[10] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: "(a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[11] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

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

[13] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[14] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[15] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[16] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

[17] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[18]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[19] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[20]

Issue 1: What is the scope of the Commission's jurisdiction directed by AB 2855?

It is a well-settled issue of law that administrative agencies, such as the Commission, are entities of limited jurisdiction. Administrative agencies have only the powers that have been conferred on them, expressly or by implication, by statute or constitution. An administrative agency may not substitute its judgment for that of the Legislature. When an administrative agency acts in excess of the powers conferred upon it by statute or constitution, its action is void.[21]

Since the Commission was created by the Legislature, its powers are limited to those authorized by statute.[22] Government Code section 17551 requires the Commission to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to reimbursement pursuant to article XIII B, section 6 of the California Constitution. Government Code section 17521 defines the test claim as the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Thus, the Government Code gives the Commission jurisdiction only over those statutes or executive orders pled by the claimant in the test claim, and generally grants the Commission a single opportunity to make a final decision on the test claim. Government Code section 17559 grants the Commission statutory authority to reconsider prior final decisions, if a request to reconsider is made within 30 days after the Statement of Decision is issued.

In the present case, the Commission's jurisdiction is based solely on AB 2855. Absent AB 2855, the Commission would have no jurisdiction to reconsider any part of the *School Accountability Report Cards* decision since the original decision was adopted and issued in 1998, well over 30 days ago.

Thus, the Commission must act within the jurisdiction granted by AB 2855, and may not substitute its judgment regarding the scope of its jurisdiction on reconsideration for that of the

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[18] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[19] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[20] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[21] *Ferdig v. State Personnel Board* (1969) 71 Cal.2d 96, 103-104.

[22] Government Code section 17500 et seq.

Legislature.[23] Since an action by the Commission is void if its action is in excess of the powers conferred by statute, the Commission must narrowly construe the provisions of AB 2855.

Under the rules of statutory construction, when the statutory language is plain the court is required to enforce the statute according to its terms. The California Supreme Court determined that:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. We begin by examining the statutory language, giving the words their usual and ordinary meaning. If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations omitted.][24]

Neither the court, nor the Commission, may disregard or enlarge the plain provisions of a statute or go beyond the meaning of the words used when the words are clear and unambiguous. Thus, the Commission, like the court, is prohibited from writing into a statute, by implication, express requirements that the Legislature itself has not seen fit to place in the statute.[25] To the extent there is any ambiguity in the language used in the statute, the legislative history of the statute may be reviewed to interpret the intent of the Legislature.[26]

Statutes 2004, chapter 895, section 18 (AB 2855), directs the Commission to reconsider the prior final decision in *School Accountability Report Cards*, as follows:

> Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-21, relating to the School Accountability Report Card mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes in light of federal statutes enacted and state court decisions rendered since these statutes were enacted:
>
> (a) Chapter 1463 of the Statutes of 1989.
>
> (b) Chapter 759 of the Statutes of 1992.
>
> (c) Chapter 1031 of the Statutes of 1993.
>
> (d) Chapter 824 of the Statutes of 1994.
>
> (e) Chapter 918 of the Statutes of 1997.

Statutes 1997, Chapter 912.

Statutes 1997, chapter 912 was part of the original test claim decision, but was not included in the reconsideration statute. Therefore, Statutes 1997, chapter 912, as it amended Education Code section 33126, cannot be reconsidered by the Commission at this time.

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[23] *Cal. State Restaurant Assn. v. Whitlow* (1976) 58 Cal.App.3d 340, 346-347.

[24] *Estate of Griswold* (2001) 25 Cal.4th 904, 910-911.

[25] *Whitcomb v. California Employment Commission* (1944) 24 Cal.2d 753, 757.

[26] *Estate of Griswold, supra*, 25 Cal.4th at page 911.

Education Code Section 35256.

Although Education Code section 35256 was included in the original test claim pleading, the Legislature has not ordered any reconsideration of this section, because it was not added or amended by any of the statutes and chapters listed in AB 2855. No reimbursable state-mandated activities were attributed to this code section in the original Commission decision because it was added to the code through Proposition 98, and to date, Education Code section 35256 has never been amended by the Legislature. Pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), ballot measures adopted by the voters in a statewide election do not impose reimbursable state mandates.

Reimbursement Period

AB 2855 was non-urgency legislation, operative January 1, 2005. The legislation does not specify a reimbursement period for any changes to the *School Accountability Report Card*s parameters and guidelines following the reconsideration of the underlying test claim decision. The courts have established a strong presumption against the retroactive application of statutes:

> As Chief Justice Gibson wrote for the court in *Aetna Cas. & Surety Co. v. Ind. Acc. Com., supra*, 30 Cal.2d 388 - the seminal retroactivity decision noted above – "[i]t is an established canon of interpretation that statutes are not to be given a retrospective operation unless it is clearly made to appear that such was the legislative intent." (30 Cal.2d at p. 393.) This rule has been repeated and followed in innumerable decisions.[27]

In the absence of clear legislative intent to the contrary, the Commission finds that AB 2855 is not to be applied retroactively, and the period of reimbursement for the Commission's decision on reconsideration begins July 1, 2005. Thus, to the extent the Commission modifies its prior decision in *School Accountability Report Cards*, subsequent changes to the parameters and guidelines will be effective for reimbursement claims filed for the 2005-2006 fiscal year.

Issue 2: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

Test Claim Legislation Subject to Reconsideration

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[28] The court has held that only one of these findings is necessary.[29]

The Commission finds that providing a School Accountability Report Card imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests.

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[27] *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1207.

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

[29] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

First, it constitutes a program that carries out the governmental function of providing a service to the public because it requires school districts to make a document available to the public that is designed to "promote a model statewide standard of instructional accountability and conditions for teaching and learning."[30] The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.[31]

The test claim legislation also satisfies the second test that triggers article XIII B, section 6, because the test claim legislation requires school districts to engage in administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Accordingly, the Commission finds that providing a School Accountability Report Card constitutes a "program" and, thus, may be subject to article XIII B, section 6 of the California Constitution if the legislation also imposes a new program or higher level of service, and costs mandated by the state.

Issue 3: Does the test claim legislation impose a new program or higher level of service within an existing program within the meaning of the California Constitution, article XIII B, section 6, and impose costs mandated by the state pursuant to Government Code sections 17514 and 17556?

In 1987, the California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term "higher level of service" must be read in conjunction with the phrase "new program." Both are directed at state-mandated increases in the services provided by local agencies.[32]

In 1990, the Second District Court of Appeal decided the *Long Beach Unified School District* case, which challenged a test claim filed with the Board of Control on executive orders issued by the Department of Education to alleviate racial and ethnic segregation in schools.[33] The court determined that the executive orders did not constitute a "new program" since schools had an existing constitutional obligation to alleviate racial segregation.[34] However, the court found that the executive orders constituted a "higher level of service" because the requirements imposed by the state went beyond constitutional and case law requirements. The court stated in relevant part the following:

> The phrase "higher level of service" is not defined in article XIII B or in the ballot materials. [Citation omitted.] A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because the

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[30] Education Code section 33126, as added to the Education Code by Proposition 98.

[31] *Long Beach Unified School Dist., supra,* 225 Cal.App.3d at page 172 states "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function . . . administered by local agencies to provide service to the public."

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

[33] *Long Beach Unified School District, supra,* 225 Cal.App.4th 155.

[34] *Id.* at page 173.

> requirements go beyond constitutional and case law requirements. . . .While these steps fit within the "reasonably feasible" description of [case law], the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts. These requirements constitute a higher level of service. We are supported in our conclusion by the report of the Board to the Legislature regarding its decision that the Claim is reimbursable: "Only those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable."[35]

In addition, pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), ballot measures adopted by the voters in a statewide election do not impose reimbursable state mandates. Government Code section 17556, subdivision (f), was amended by Statutes 2005, chapter 72 (AB 138, urgency, eff. July 19, 2005), indicated in underline and strikethrough, as follows:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: . . .
>
> (f) The statute or executive order imposes~~d~~ duties that ~~were~~ are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election. This subdivision applies regardless of whether the statute or executive order was enacted or adopted before or after the date on which the ballot measure was approved by the voters.

Thus, pursuant to applicable case law, article XIII B, section 6, and Government Code section 17556, subdivision (f), in order for the test claim statutes under reconsideration to impose a new program or higher level of service and costs mandated by the state, the Commission must find that the state is imposing newly required acts or activities on school districts beyond the scope of those already imposed by the voters through ballot measures, ultimately resulting in costs mandated by the state.

The California voters approved Proposition 98, effective November 9, 1988, providing a state-funding guarantee for schools. Proposition 98 amended article XVI, section 8 of the California Constitution, including adding subdivision (e), requiring all elementary and secondary school districts to develop and prepare an annual audit of such funds and a School Accountability Report Card for every school. The voters also required the state to develop a model report card by adding Education Code section 35256, as follows:

> The governing board of each school district maintaining an elementary or secondary school shall by September 30, 1989, or the beginning of the school year develop and cause to be implemented for each school in the school district a School Accountability Report Card.
>
> (a) The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126.

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[35] *Ibid.*

(b) Not less than triennially, the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education. Variances among school districts shall be permitted where necessary to account for local needs.

(c) The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request.

By specifying that the School Accountability Report Card "is not limited to" the provisions set out originally in Education Code section 33126, and by requiring districts to periodically compare their School Accountability Report Card with the statewide model, the electorate recognized that the precise details of the model report card are subject to change, and that districts are required to make modifications as necessary.

STATUTES 1993, CHAPTER 1031 AND STATUTES 1994, CHAPTER 824:

Education Code Section 33126.

Section 33126 was added to the Education Code by Proposition 98, approved by the electors, effective November 9, 1988. Pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), "duties that are necessary to implement, reasonably within the scope of, or expressly included in a ballot measure approved by the voters in a statewide or local election" do not impose reimbursable state mandates.

Education Code section 33126, as amended by Statutes 1993, chapter 1031 and Statutes 1994, chapter 824, follows. Amendments to the original initiative language are indicated in underline and strikethrough:

In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction shall, by March 1, 1989, develop and present to the State Board of Education for adoption a statewide model ~~S~~school ~~A~~accountability ~~R~~report ~~C~~card.

(a) The model ~~S~~school ~~A~~accountability ~~R~~report ~~C~~card shall include, but is not limited to, assessment of the following school conditions:

(1) ~~Student~~ Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals.

(2) Progress toward reducing drop-out rates.

(3) Estimated expenditures per pupil and types of services funded.

(4) Progress toward reducing class sizes and teaching loads.

(5) Any assignment of teachers outside their subject areas of competence.

(6) Quality and currency of textbooks and other instructional materials.

(7) The availability of qualified personnel to provide counseling and other ~~student~~ pupil support services.

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities.

(10) Adequacy of teacher evaluations and opportunities for professional improvement.

(11) Classroom discipline and climate for learning.

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

(13) Quality of school instruction and leadership.

(14) The degree to which pupils are prepared to enter the workforce.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

(b) In developing the statewide model ~~S~~school ~~A~~accountability ~~R~~report, the Superintendent of Public Instruction shall consult with a Task Force on Instructional Improvement, to be appointed by the ~~S~~superintendent, composed of practicing classroom teachers, school administrators, parents, school board members, classified employees, and educational research specialists, ~~provided that~~ However, the majority of the task force shall consist of practicing classroom teachers.

In the original test claim filing, the claimants alleged the test claim statutes "impose requirements related to school accountability report cards that exceed the voter-imposed requirements that were expressly set forth in Proposition 98."[36] Claimants specifically alleged that Statutes 1993, chapter 1031 "amended Education Code section 33126 to add the requirement that school districts include an assessment of the degree to which students are prepared to enter the workforce," and Statutes 1994, chapter 824 "amended Education Code section 33126 to add the requirement that school districts include in their school accountability report cards (1) the total number of instructional minutes and (2) the total number of minimum days in the school year."[37] The claimants argued that "districts have incurred or will incur costs: (a) for school districts to collect the required data, prepare the required analyses, and include the analyses and data in their school accountability report cards" for the additional activities alleged.[38]

The Commission must determine whether the data elements identified are actually new, or rather, as set out in Government Code section 17556, subdivision (f), existing law previously expressed by the voters, or otherwise "necessary to implement, reasonably within the scope of" the original initiative. Intent to *change* the law must not be presumed by an amendment. The

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[36] *Test Claim Filing*, Administrative Record [AR], page 43.

[37] *Id.* at page 44.

[38] *Id.* at page 45.

courts have recognized that changes in statutory language can be intended to clarify the law, rather than change it.

> We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. [Citation.] Our consideration of the surrounding circumstances can indicate that the Legislature made . . . changes in statutory language in an effort only to clarify a statute's true meaning. [Citations omitted.][39]

Proposition 98, "The Classroom Instructional Improvement and Accountability Act," was adopted by the voters in 1988. The initial statement of "Purpose and Intent" declared, in part, "The People of the State of California find and declare that:"

> (e) It is the intent of the People of California to ensure that our schools spend money where it is most needed. Therefore, this Act will require every local school board to prepare a School Accountability Report Card to guarantee accountability for the dollars spent.

Proposition 98, section 13, provides: "No provision of this Act may be changed *except to further its purposes* by a bill passed by a vote of two-thirds of the membership of both houses of the Legislature and signed by the Governor." (Emphasis added.) Both Statutes 1993, chapter 1031, and Statutes 1994, chapter 824 were passed by a two-thirds vote of the Legislature and signed by the Governor.[40] Each statute also affirmatively states: "The Legislature finds and declares that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act."[41] The Commission must presume legislative amendments to the requirements for the School Accountability Report Card are constitutionally valid,[42] and thus such amendments must also be presumed to further the purposes of the original Classroom Instructional Improvement and Accountability Act. Therefore, the subject amendments are part of an existing non-reimbursable program and are not a "new program."

In this instance, the Commission finds that the legislation adding subdivisions (a)(14) through (16) requires data be provided in the School Accountability Report Card that was not expressly included in the original requirements of Proposition 98. The following data elements are new:

- The degree to which pupils are prepared to enter the workforce.

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[39] *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

[40] Bill histories found at < http://www.leginfo.ca.gov/pub/93-94/bill/asm/ab_0151-0200/ab_198_bill_history> (Stats. 1993, ch. 1031) and < http://www.leginfo.ca.gov/pub/93-94/bill/sen/sb_1651-1700/sb_1665_bill_history> (Stats. 1994, ch. 824) [as of July 20, 2005.]

[41] AR, pages 69 and 71.

[42] Article III, section 3.5 of the California Constitution places limitations on the powers of administrative agencies, such as the Commission, and prohibits administrative agencies from refusing to enforce a statute or from declaring a statute unconstitutional. Section 3.5 states, in part: "An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power: (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional."

- The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.
- The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

However, the addition of this information to the School Accountability Report Card may be interpreted as "reasonably within the scope of" the original initiative. Either way, this does not necessarily rise to the level of a higher level of service or impose costs mandated by the state within the meaning recognized by the courts. As explained below, these incidental duties do not require subvention.

Sweetwater Union, in comments received May 9, 2005, asserts, "Proposition 98 was the base for the law requiring School Accountability Report Cards and the 13 original requirements, and created the measuring point upon which the required service was based. The onslaught of additional School Accountability Report Card requirements through legilative [sic] actions, intended to provided [sic] additional information to the public, elevated the required points of service to a higher level."

Assuming, for purposes of analysis, that the claimants did meet their burden of proving a higher level of service for the new information required to be included in the School Accountability Report Card, they have not met their burden of proving costs mandated by the state. In *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1193-1194, the County sought to vacate a Commission decision that denied a test claim for costs associated with a statute requiring local law enforcement officers to participate in two hours of domestic violence training. The court upheld the Commission's decision that the test claim legislation did not mandate any increased costs and thus no reimbursement was required. The court concluded:

> Based upon the principles discernable from the cases discussed, we find that in the instant case, the legislation does not mandate a "higher level of service." In the case of an existing program, an increase in existing costs does not result in a reimbursement requirement. Indeed, "costs" for purposes of Constitution article XIII B, section 6, does not equal every increase in a locality's budget resulting from compliance with a new state directive. Rather, the state must be attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding.
>
> [¶]...[¶]
>
> [M]erely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.

Finally, the court concluded (*id.,* at p. 1195):

> Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can

> be complied with by a minimal reallocation of resources within the entity seeking reimbursement. Thus, while there may be a mandate, there are no increased costs mandated by [the test claim legislation].

Likewise here, by requiring the addition of a few lines to the existing School Accountability Report Card, the state has not shifted from itself to districts "the burdens of state government," when "the directive can be complied with by a minimal reallocation of resources." Sweetwater Union's comments on the draft staff analysis argue this "**IS NOT** material to the issue of whether or not a mandate has been imposed."[43] The district further states that this citation "does not reflect: (1) the wording that appears in; or (2) the intention of; the State's Constitutional protection provided to local governmental agencies." The district does not explain how the *County of Los Angeles* decision is distinguishable from the test claim under reconsideration, but rather implies that the court's decision violates certain protections to local agencies established by the California Constitution. In exercising its jurisdiction to decide test claims, the Commission must follow the courts' rulings in precedential decisions. The California Supreme Court has done nothing to overturn or disapprove the appellate court's published decision in *County of Los Angeles*, thus it remains good law and may not be ignored or disregarded. Therefore, the Commission follows the court's analysis and finds no costs mandated by the state were imposed in these circumstances.

In comments received July 8, 2005, School Innovations & Advocacy states:

> Finally, Commission staff cites *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, as support for the argument that the legislative amendments to the SARC are *de minimis* and do not mandate increased costs, therefore no reimbursement is required. [Footnote and citation omitted.] However, staff provides no analysis of the costs of the various legislative mandates related to the SARC. Indeed, the Commission's prior ruling on these mandates suggest the cost is not minimal. The Commission adopted a statewide cost estimate for SARC I of $1.7 million. It is our understanding that in order of total cost SARC I was 13th out of 30 claims for which estimates were made by the Commission for 2002-03. Does this mean that more than half of these 30 claims can be considered *de minimis* and not reimbursable? Staff should clearly state a standard by which SARC I costs can be measured to determine whether or not they are *de minimis*. Is there a dollar amount threshold? Is the standard based on the percentage of the legislative amendments costs compared to the total SARC costs? Is each legislative amendment assessed individually, or should the Commission look at the aggregate costs of all legislative amendments to determine whether costs are *de minimis?* Without such an analysis the argument that the legislative mandates related to SARC are *de minimis* is simply a stated conclusion rather than a finding based on evidence.

First, the original staff analysis did not discuss "*de minimis*" costs or activities. *De minimis* is defined in Black's Law Dictionary (7th ed.) as "Trifling, minimal," or "so insignificant that a court may overlook it in deciding an issue or case." The application of the *County of Los Angeles* decision is focused on the court's finding that "In the case of an existing program,"

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[43] Emphasis in original.

(in this case, the original School Accountability Report Card requirements established by Proposition 98) "an increase in existing costs does not result in a reimbursement requirement." In addition, examining whether legislative amendments "can be complied with by a minimal reallocation of resources," is not synonymous with finding that those amendments result in *de minimis* costs.

However, as the issue was raised repeatedly by the interested parties at the May 2005 hearing, and in subsequent written comments, we will address the *de minimis* argument here. The California Supreme Court in *San Diego Unified School Dist., supra,* 33 Cal.4th at pages 888-890, discussed a *de minimis* standard as it applied in a situation where there is an existing federal law program, (non-reimbursable pursuant to the express language of art. XIII B, § 6 and Gov. Code, § 17556, subd. (c)) and the state then "articulated specific procedures, not expressly set forth in federal law."[44] The Court expressly affirmed the appellate decision in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, as follows:

> These protections are designed to make the underlying federal right enforceable and to set forth procedural details that were not expressly articulated in the case law establishing the respective rights; *viewed singly or cumulatively, they did not significantly increase the cost of compliance* with the federal mandate.
>
> The Court of Appeal in *County of Los Angeles II* concluded that, for purposes of ruling upon a claim for reimbursement, such incidental procedural requirements, producing at most de minimis added cost, should be viewed as part and parcel of the underlying federal mandate, and hence nonreimbursable under Government Code, section 17556, subdivision (c). We reach the same conclusion here.
>
> *Indeed, to proceed otherwise in the context of a reimbursement claim would produce impractical and detrimental consequences.* The present case demonstrates the point. The record reveals that in the extended proceedings before the Commission, the parties spent numerous hours producing voluminous pages of analysis directed toward determining whether various provisions of Education Code section 48918 exceeded federal due process requirements.
>
> [¶...¶]
>
> In light of these considerations, we agree with the conclusion reached by the Court of Appeal in *County of Los Angeles II, supra,* 32 Cal.App.4th 805, 38 Cal.Rptr.2d 304: for purposes of ruling upon a request for reimbursement, challenged state rules or procedures that are intended to implement an applicable federal law--and whose costs are, in context, de minimis--should be treated as part and parcel of the underlying federal mandate. [Emphasis added.]

To analogize to the School Accountability Report Cards claim, there is an existing voter-initiative program, (non-reimbursable pursuant to art. XIII B, § 6 and Gov. Code, § 17556, subd. (f),) for which the state Legislature subsequently articulated procedures which were not explicit in the original voter-initiative. Following the logic expressed by the California Supreme Court in the recent *San Diego Unified School Dist.* decision, the legislative requirements under reconsideration here should be viewed as part and parcel of the underlying Proposition 98

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[44] *Id.* at page 888.

mandate. Note that the Court did not come up with a dollar amount as a threshold for determining *de minimis* additions to an existing non-reimbursable program, nor any other clear standard; simply finding that the costs and activities must be *de minimis*, "in context."

There are several problems with the assertions made by the interested parties in regards to a *de minimis* analysis. First is reliance on the statewide cost estimate for the original test claim decision in order to establish whether the costs claimed are *de minimis* in nature. The statewide cost estimate for School Accountability Report Cards (97-TC-21) was adopted March 25, 1999 and contained the following findings:

> **Methodology**
>
> To arrive at the total statewide cost estimate, staff:
>
> - Used 531 unaudited actual claim totals filed with the State Controller for prior fiscal years for which claims were filed, [fn. Current data as of February 1999.] and
> - Projected current and future fiscal year totals using the following formula:
>
> *Prior year claim total ($) x The Implicit Price Deflator* [fn. As projected by the Department of Finance.]
>
> **Recommendation**
>
> Staff recommends that the Commission adopt this proposed statewide cost estimate in the amount of $5,713,000 for costs incurred in complying with the provisions set forth in the test claim statutes.
>
> Following is a breakdown of estimated total costs per fiscal year:
>
> | **Fiscal Year** | **Total** |
> |---|---|
> | 1996-97 | $ 923,927 |
> | 1997-98 | $1,564,310 |
> | 1998-99 | $1,592,468 |
> | 1999-00 | $1,632,279 |
> | Total | $5,712,984 |
> | **Total (rounded)** | **$5,713,000** |
>
> Because the reported costs are prior to audit and partially based on estimates, the statewide cost estimate of $5,712,984 has been rounded to $5,713,000.

The first problem with relying on the statewide cost estimate as a factor in defining a *de minimis* standard in this case is in using unaudited claims data. Second, the original decision and claims include a significant number of activities attributed to Statutes 1997, chapter 912,[45] which is not subject to this reconsideration. From the statewide cost estimate data, it is impossible to determine how much of the costs are solely attributable to Statutes 1997, chapter 912.

School Innovations & Advocacy's July 8, 2005 comments, as well as statements made by the Education Mandated Cost Network at the May hearing, assert that "in order of total cost SARC I

[45] See the Conclusion, below.

was 13th out of 30 claims for which estimates were made by the Commission for 2002-03. Does this mean that more than half of the these claims can be considered *de minimis* and not reimbursable?"

The Commission finds that this "numbers" argument is equally misleading. A *de minimis* analysis should not compare the School Accountability Report Card claims to the size of other mandates claims, but rather compare how the claims fit into the larger pre-existing program of providing a School Accountability Report Card under Proposition 98, and how significant the claims are in light of the state funding available under Proposition 98.

The Commission cannot analyze the first *de minimis* approach because we have no evidence in the record regarding what the true cost to schools would be of completing an annual School Accountability Report Card if the Legislature had *never* made amendments following the original Proposition 98 requirements. To make a fair comparison, the Commission would have to know what it costs to complete the School Accountability Report Card, then determine what percentage of the costs are solely attributable to the activities subject to reconsideration. Indeed, statements of the California Supreme Court suggest that the Commission should not be expected to undertake such an "impractical" analysis when determining mandates claims.[46]

The second approach is to compare the costs of the activities to the funding available. In order to make a reasonable funding comparison, we can examine the cost estimate data from the 1999-2000 fiscal year. The statewide cost estimate uses a figure of $1,632,279 for costs from School Accountability Report Cards for 1999-2000. Ignoring the fact that a significant portion of the $1.6 million estimate should be attributable to Statutes 1997, chapter 912, we will use this figure. School districts received over $27 billion in state Proposition 98 funds for 1999-2000.[47] $1,632,279 is .006 percent of $27,162,572,602. Expressed another way, this is 6 cents out of every $1000 in state funding. The Commission asserts that this is a *de minimis* figure, in every sense of the term.

In addition, school districts have provided no evidence that the amendments alleged require the expenditure of local tax revenues, rather than the expenditure of school funding provided by the state, or funds available from other sources. A CDE document entitled, "Key Statewide Averages Fiscal Year 2001-02"[48] demonstrates that only 21.94 percent of public school funding comes from local property tax revenues. A full 52.96 percent is directly from state sources,[49] and the remainder of the funding comes from federal and other sources, including federal Title I funding and state lottery revenue. "[I]t is the expenditure of tax revenues of local governments that is the appropriate focus of section 6." (*County of Sonoma v. Commission on State Mandates*, *supra*, 84 Cal.App.4th at p. 1283, citing *County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.) "No state duty of subvention is triggered where the local agency is

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[46] *San Diego Unified School Dist., supra,* 33 Cal.4th at page 889.

[47] "Key Statewide Averages Fiscal Year 1999-00"At <http://www.cde.ca.gov/ds/fd/ks/k12educ9900.asp> [as of Jul. 20, 2005.] The CDE is the department statutorily charged with receiving school district and county office of education budget, audit, apportionment, and other financial status reports, pursuant to Education Code section 42129.

[48] At <http://www.cde.ca.gov/ds/fd/ks/k12educ0102.asp> [as of Jul. 20, 2005.]

[49] Over $31 billion for fiscal year 2000-2001.

not required to expend its proceeds of taxes." (*Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987.)

Sweetwater Union, in comments received May 9, 2005, asserts, "Under current law, Revenue Limits are the primary source of funding for a school district, and consist of the combination of State revenues and Local revenues. Local property taxes are collected by a county tax collector, and reported to the state for purpose of reducing the State level of funding for school district Revenue Limits. ... In addition, since Proposition 13, local agencies DO NOT have the ability to increase property taxes to accommodate State imposed mandated higher levels of service."

The Commission agrees that school districts are not able to increase property taxes in order to pay for School Accountability Report Cards; however, as described by the courts, the *required* expenditure of tax revenues is a threshold issue for finding "costs mandated by the state."

In enacting Proposition 98, The Classroom Instructional Improvement and Accountability Act, the voters provided public schools with state funding guarantees by amending the California Constitution, article XVI, section 8, School Funding Priority, and adding section 8.5, Allocation to Schools. In exchange for this constitutional guarantee of funding, the voters also required districts to undergo an annual audit and to issue an annual School Accountability Report Card. As recently decided by the California Supreme Court regarding a school district mandates claim, the availability of state program funds precludes a finding of a reimbursable state mandate.

> We need not, and do not, determine whether claimants have been legally compelled to participate in the Chacon-Moscone Bilingual Bicultural Education program, or to maintain a related advisory committee. Even if we assume for purposes of analysis that claimants have been legally compelled to participate in the ... program, we nevertheless conclude that under the circumstances here presented, *the costs necessarily incurred* in complying with the notice and agenda requirements under that funded program *do not entitle claimants to obtain reimbursement under article XIII B, section 6, because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary* notice and agenda related *expenses*. [Emphasis added.]

(*Department of Finance v. Commission on State Mandates*, *supra,* 30 Cal.4th at pp. 746-747.)

School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, the Commission concludes that state funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. In the absence of that showing, on a second and independent ground, the Commission finds that the test claim legislation does not impose costs mandated by the state.

On May 25, 2005, a late filing was received from the Education Management Group. The letter asserts that staff's analysis on costs mandated by the state is based on a new legal theory requiring schools to prove that reimbursable mandated costs are paid from a property tax source. The Education Management Group argues this would make it impossible for school districts to prove any past or future mandate claims, due to an accounting burden that schools cannot meet.

The Commission finds that the interested party takes the funding argument out of context. The analysis is on a test claim for School Accountability Report Cards, which, as previously stated, is uniquely tied to the Proposition 98 funding guarantee. As described above, districts receive well over 31 billion dollars a year through Proposition 98; therefore the Commission finds that to receive reimbursement for this test claim, districts have the burden to prove that they are required to exceed Proposition 98 funding in order to provide annual School Accountability Report Cards.

Interested parties argue that if this analysis is adopted by the Commission, districts are going to be forced in future mandate claims to prove that they used their Proposition 98 funds to offset *all* state mandate requirements. This is an erroneous assumption. As a quasi-judicial body, each of the Commission's mandate decisions must be supported by current constitutional, statutory and case law, but each decision is limited to the claim presented and Commission decisions are not precedential. However, the Commission also notes that this decision does *not* present a novel theory of law as stated in the late filing. This exact issue and language was heard and adopted by the Commission over a year ago at the March 2004 hearing on *School Accountability Report Cards II and III.*

Thus, for the reasons stated above, the Commission finds that Education Code section 33126, as amended by Statutes 1993, chapter 1031 and Statutes 1994, chapter 824, does not impose a new program or higher level of service on school districts, and does not impose costs mandated by the state.

STATUTES 1989, CHAPTER 1463 AND STATUTES 1992, CHAPTER 759:

Education Code Section 35256.1.

Education Code section 35256.1, as added by Statutes 1989, chapter 1463:

> In addition to the information required under Section 35256, each School Accountability Report Card shall include the information required under Section 41409.3.

The requirement to include additional information in the School Accountability Report Card is codified in this Education Code section, but the requirement is expressed in detail as part of Education Code section 41409.3, also added by Statutes 1989, chapter 1463. Therefore, the requirement to "include the information required under Section 41409.3" will be discussed below, under the "Education Code section 41409.3" heading.

Education Code Section 41409.

Education Code section 41409 was added by Statutes 1989, chapter 1463 and amended by Statutes 1992, chapter 759.[50] The code section requires the state Superintendent of Public Instruction to "determine the statewide average percentage of school district expenditures that are allocated to the salaries of administrative personnel, ... [and] also shall determine the statewide average percentage of school district expenditures that are allocated to the salaries of teachers."

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[50] Further amendments by Statutes 2001, chapter 734 (AB 804), was the subject of the *School Accountability Report Cards II and III* Statement of Decision.

Education Code section 41409, subdivision (c), provides:

> The statewide averages calculated pursuant to subdivisions (a) and (b) shall be provided annually to each school district for use in the school accountability report card.

This statute, as amended by Statutes 1992, chapter 759, was found in the Commission's April 23, 1998 Statement of Decision to impose a mandate for the inclusion of information on "salaries paid to schoolteachers, school site principals, and school district superintendents."

The Commission finds that Education Code section 41409 does not directly require any activities of school districts, but is a directive to the state Superintendent of Public Instruction to provide certain information to school districts. Thus, Education Code section 41409 does not impose a new program or higher level of service on school districts. However, Education Code section 41409.3 does require districts to include this information in their School Accountability Report Cards, as discussed below.

Education Code Section 41409.3.

Education Code section 41409.3, as added by Statutes 1989, chapter 1463 and amended by Statutes 1992, chapter 759, follows:

> Each school district, except for school districts maintaining a single school to serve kindergarten or any of grades 1 to 12, inclusive, shall include in the school accountability report card required under Section 35256 a statement that shall include the following information:
>
> (a) The beginning, median, and highest salary paid to teachers in the district, as reflected in the district's salary scale.
>
> (b) The average salary for schoolsite principals in the district.
>
> (c) The salary of the district superintendent.
>
> (d) Based upon the state summary information provided by the Superintendent of Public Instruction pursuant to subdivision (b) of Section 41409, the statewide average salary for the appropriate size and type of district for the following:
>
> (1) Beginning, midrange, and highest salary paid to teachers.
>
> (2) Schoolsite principals.
>
> (3) District superintendents.
>
> (e) The statewide average of the percentage of school district expenditures allocated for the salaries of administrative personnel for the appropriate size and type of district for the most recent fiscal year, provided by the Superintendent of Public Instruction pursuant to subdivision (a) of Section 41409.
>
> (f) The percentage allocated under the district's corresponding fiscal year expenditure for the salaries of administrative personnel, as defined in Sections 1200, 1300, 1700, 1800, and 2200 of the California School Accounting Manual published by the State Department of Education.
>
> (g) The statewide average of the percentage of school district expenditures allocated for the salaries of teachers for the appropriate size and type of district

for the most recent fiscal year, provided by the Superintendent of Public Instruction, pursuant to subdivision (a) of Section 41409.

(h) The percentage expended for the salaries of teachers, as defined in Section 1100 of the California School Accounting Manual published by the State Department of Education.

The Commission agrees that prior to the adoption of Statutes 1989, chapter 1463, adding Education Code sections 35256.1 and 41403.9, there was no state requirement for including local and statewide teacher, principal, and superintendent salary information in the School Accountability Report Card. The CDE website has files available for download containing all of the statewide data needed for the School Accountability Report Card (subdivisions (d) through (h).) The CDE website also provides a School Accountability Report Card template for optional use by school districts, which contains all of the state data to meet this requirement already filled in.[51] The district does need to gather and enter their own salary information on the state template, or on the district's own form.

Proposition 98 added Education Code section 35256, which includes the provisions: "The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126;" and "Not less than triennially, the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education."[52]

By specifying that the School Accountability Report Card "is not limited to" the provisions set out originally in Education Code section 33126, and by requiring districts to periodically compare their School Accountability Report Card with the statewide model, the electorate recognized that the precise details of the model report card are subject to change, and that districts are required to make modifications as necessary.

The same analysis for finding a new program or higher level of service and costs mandated by the state regarding data elements added to the School Accountability Report Card through legislative amendments to Education Code section 33126, as discussed above, applies to Education Code sections 35256.1 and 41409.3. In brief, by requiring the addition of a few lines to the existing School Accountability Report Card, the state has not shifted from itself to districts "the burdens of state government," when "the directive can be complied with by a minimal reallocation of resources."[53] In addition, in *Department of Finance v. Commission on State Mandates*, *supra,* 30 Cal.4th at pages 746-747, the California Supreme Court found the availability of state program funds precludes a finding of a reimbursable state mandate. School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, the Commission concludes that State funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that

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[51] At <http://www.cde.ca.gov/ta/ac/sa/> [as of Jul. 20, 2005.]

[52] The full text of Education Code section 35256 is above.

[53] *County of Los Angeles v. Commission on State Mandates*, *supra*, 110 Cal.App.4th at pages 1193-1194.

the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. Therefore, the Commission finds that Education Code section 35256.1, as added by Statutes 1989, chapter 1463, and Education Code sections 41409 and 41409.3, as added Statutes 1989, chapter 1463 and amended by Statutes 1992, chapter 759, do not impose a new program or higher level of service on school districts, and do not impose costs mandated by the state.

STATUTES 1997, CHAPTER 918:

Education Code Section 35258.

Education Code section 35258, as added by Statutes 1997, chapter 918:

> On or before July 1, 1998, each school district that is connected to the Internet shall make the information contained in the School Accountability Report Card developed pursuant to Section 35256 accessible on the Internet. The School Accountability Report Card information shall be updated annually.

The original School Accountability Report Card distribution requirement from Proposition 98 was codified in Education Code section 35256 (see full text and discussion above.) Subdivision (c) follows:

> The Governing Board of each school district shall annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request.

Statutes 1997, chapter 918, section 1 (uncodified), provides:

> (a) The Legislature finds and declares that, although our state has embraced technology in creating a revolution of growth, our schools have not kept pace with this technology revolution. Access to information through the use of technology has become an integral and crucial part in the decisionmaking processes of government, industry, and the home. However, our schools do not facilitate access to information through one of the most available information technology mediums, the Internet.
>
> (b) It is the intent of the Legislature to improve the access of parents and the community to school-based information.

It is clear from the adoption of Education Code section 35256 as part of the 1988 Proposition 98 school funding scheme, the electorate wanted districts to provide widespread accessibility for the School Accountability Report Card. In 1997, the Legislature recognized that new technology was now widely available for this purpose and newly required that all districts with an existing connection to the Internet must use this technology to disseminate School Accountability Report Cards.

By requiring a new method for publicizing and distributing the existing School Accountability Report Card, the state has not shifted from itself to districts "the burdens of state government,"

when "the directive can be complied with by a minimal reallocation of resources."[54] In addition, in *Department of Finance v. Commission on State Mandates*, *supra,* 30 Cal.4th at pages 746-747, the California Supreme Court found the availability of state program funds precludes a finding of a reimbursable state mandate. School Accountability Report Cards were an essential part of the school-funding scheme approved by the voters when enacting Proposition 98; therefore, the Commission concludes that State funding received by schools under Proposition 98 is equivalent to "program funds" for the purposes of completing a School Accountability Report Card. School districts have not demonstrated that the state funds received through article XVI, sections 8 and 8.5 are unavailable for the claimed additional costs of adding data elements to existing School Accountability Report Cards. Therefore, the Commission finds that Education Code section 35258, as added by Statutes 1997, chapter 918, does not impose a new program or higher level of service on school districts, and does not impose costs mandated by the state.

CONCLUSION

The Commission concludes that Education Code sections 33126, 35256.1, 35258, 41409, and 41409.3, as added or amended by Statutes 1989, chapter 1463, Statutes 1992, chapter 759, Statutes 1993, chapter 1031, Statutes 1994, chapter 824, and Statutes 1997, chapter 918, do not impose a new program or higher level of service, and do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556.

In the case of reimbursable state-mandated activities from Statutes 1997, chapter 912, the Commission does not have statutory authority to rehear that portion of the original decision.[55]

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[54] *County of Los Angeles v. Commission on State Mandates*, *supra*, 110 Cal.App.4th at pages 1193-1194. See full discussion, above.

[55] The original Statement of Decision found that Statutes 1997, chapter 912, "amended Education Code section 33126 to require school districts to include the following information in their school accountability report cards:"

- results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment (§ 33126, subd. (b)(1));
- for schools with high school seniors, the average verbal and math Scholastic Assessment Test scores to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period (§ 33126, subd. (b)(1));
- the one-year dropout rate for the schoolsite over the most recent three-year period (§ 33126, subd. (b)(2));
- the distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period (§ 33126 subd. (b)(4));

Finally, although Education Code section 35256 was included in the original test claim pleading, the Legislature has not ordered any reconsideration of this section, because it was added by Proposition 98, and not added or amended by one of the statutes named in AB 2855. No reimbursable activities were attributed to Education Code section 35256 in the original decision.

- the total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period (§ 33126, subd. (b)(5));
- any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period (§ 33126, subd. (b)(5));
- the annual number of schooldays dedicated to staff development for the most recent three-year period (§ 33126, subd. (b)(10)); and
- the suspension and expulsion rates for the most recent three-year period (§ 33126, subd. (b)(11))."