

**ITEM 5**  
**MANDATE REDETERMINATION**  
**FIRST HEARING: ADEQUATE SHOWING**  
**PROPOSED DECISION**

Education Code Sections 60850 and 60851  
Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539)  
California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209,  
1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, Register 01, No. 25, effective  
July 20, 2001 and Register 03, No. 18, effective May 1, 2003<sup>1</sup>

*High School Exit Examination (00-TC-06)*

As Alleged to be Modified by:

Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

17-MR-01

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<sup>1</sup> The captions for the Test Claim Decision and Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 included Education Code sections 60853 and 60855 and Sections “1200-1225” of the Title 5 regulations, all of which implement the California High School Exit Examination. However, sections 60853 and 60855 were denied by the Commission as not imposing any state-mandated duties on school districts and thus should not have been included in the caption for the Parameters and Guidelines. (Exhibit B, Test Claim Statement of Decision, pages 12, 15, 32.) In addition, the Parameters and Guidelines identify only the following regulations as imposing reimbursable state-mandated activities: California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220. (Exhibit B, Test Claim Statement of Decision, pages 43-47, 48; Exhibit C, Parameters and Guidelines, pages 3-7.) The Parameters and Guidelines, however, mistakenly omit a citation to section 1225 of the Title 5 regulations. As determined in the Test Claim Decision, section 1225 of the Title 5 regulations mandated the district superintendent to certify the accuracy of information regarding the number of exams for each test cycle to the California Department of Education (CDE) within a specified time. (Exhibit B, Test Claim Statement of Decision, pages 36, 48.) The Commission approved the activity mandated by section 1225 as a reimbursable state-mandated activity, and CDE did not later amend or move that activity to another regulation. (Exhibit B, Test Claim Statement of Decision, page 48.) Although that activity is correctly included in the Parameters and Guidelines, the activity is followed by an incorrect citation to section 1207. Therefore, the caption to this Mandate Redetermination includes all regulations mandating the activities approved by the Commission for reimbursement.

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Supporting Documentation

California Department of Education, Letter from Keric Ashley, Deputy Superintendent, District, School, and Innovation Branch, October 7, 2015;  
<https://www.cde.ca.gov/ta/tg/hs/cahseesuspendltr.asp> (accessed on Nov. 28, 2018).....1-4

**1. TITLE OF REQUEST TO ADOPT A NEW TEST CLAIM DECISION**

High School Exit Examination (00-TC-06)

**2. REQUESTER INFORMATION**

Name of Local Agency, School District, Statewide Association of Local Agencies or School Districts, or State Agency

Ed Hanson  
Requester Contact

Principal Program Budget Analyst  
Title

Department of Finance  
Organization

915 L Street, 7th Floor  
Street Address

Sacramento, CA 95814  
City, State, Zip Code

916-445-0328  
Telephone Number

916-323-9530  
Fax Number

Ed.Hanson@dof.ca.gov  
E-Mail Address

**3. REPRESENTATIVE INFORMATION**

If requester designates another person to act as its sole representative for this request, all correspondence and communications regarding this request shall be forwarded to this representative. Any change in representation must be authorized by the requester in writing, and sent to the Commission on State Mandates. Please complete information below if designating a representative.

Representative Name

Title

Organization

Street Address

City, State, Zip Code

Telephone Number

Fax Number

E-Mail Address

For CSM Use Only
Filing Date: <b>RECEIVED</b> June 28, 2018 <b>Commission on State Mandates</b>
REQUEST# 17-MR-01

**4. IDENTIFYING INFORMATION**

Please identify the name(s) of the programs, test claim number(s), and the date of adoption of the Statement of Decision, for which you are requesting a new test claim decision, and the subsequent change in law that allegedly changes the state's liability. Regarding the subsequent change in law, please identify all relevant code sections (include statutes, chapters, and bill numbers), regulations (include register number and effective date), executive orders (include effective date), cases, or ballot measures.

On March 26, 2004, the Commission on State Mandates (Commission) adopted the Statement of Decision for the High School Exit Examination (00-TC-06) state-mandated program and approved reimbursement for specified mandated activities. Pursuant to Government Code Section 17570, the Department of Finance requests that the Commission adopt a new test claim decision and amend the parameters and guidelines for the High School Exit Examination state-mandated program to reflect the suspension of Chapter 9 of Title 2 of the Education Code pursuant to Chapter 572, Statutes of 2015, and the repeal of these sections pursuant to Chapter 641, Statutes of 2017. Effective January 1, 2016, Chapter 572, Statutes of 2015 and Chapter 641, Statutes of 2017 eliminated the condition that students must successfully complete the High School Exit Examination to graduate from high school.

Sections 5, 6 and 7 are attached as follows:

- 5. Detailed Analysis: Pages 5 to 5.
- 6. Declarations: Pages 6 to 7.
- 7. Documentation: Pages 8 to 8.

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the name of the request, requestor, section number (i.e., 5, 6, or 7), and a heading at the top of each page.

## 5. DETAILED ANALYSIS

Under the heading "5. Detailed Analysis," please provide a detailed analysis of how and why the state's liability for mandate reimbursement has been modified pursuant to article XIII B, section 6(a) of the California Constitution based on a "subsequent change in law" as defined in Government Code section 17570. This analysis shall be more than a written narrative or simple statement of the facts at law. It requires the application of the law (Gov. Code, § 17570 (a) and (b)) to the facts (i.e., the alleged subsequent change in law) discussing, for each activity addressed in the prior test claim decision, how and why the state's liability for that activity has been modified. Specific references shall be made to chapters, articles, sections, or page numbers that are alleged to impose or not impose a reimbursable state-mandated program.

Also include all of the following elements:

The actual or estimated amount of the annual statewide changes in the state's liability for mandate reimbursement pursuant to Article XIII B, section 6 (subdivision (a)) on a subsequent change in the law.

- A. Identification of all of the following if relevant:
1. Dedicated state funds appropriated for the program.
  2. Dedicated federal funds appropriated for the program.
  3. Fee authority to offset the costs of the program.
  4. Federal law.
  5. Court decisions.
  6. State or local ballot measures and corresponding date of election.

## 6. DECLARATIONS

Under the heading "6. Declarations," support the detailed analysis with declarations that:

- A. Declare actual or estimated annual statewide costs that will or will not be incurred to implement the alleged mandate.
- B. Identify all local, state, or federal funds and fee authority that may or may not be used to offset the increased costs that will or will not be incurred by the claimants to implement the alleged mandate or result in a finding of no costs mandated by the state, pursuant to Government Code section 17556.
- C. Describe new activities performed to implement specified provisions of the statute or executive order alleged to impose a reimbursable state-mandated program.
- D. Make specific references to chapters, articles, sections, or page numbers alleged to impose or not impose a reimbursable state-mandated program.
- E. Are signed under penalty of perjury, based on the declarant's personal knowledge, information, or belief, by persons who are authorized and competent to do so.

## 7. DOCUMENTATION

Under heading "7. Documentation," support the detailed analysis with copies of all of the following:

- A. Statutes, and administrative or court decisions cited in the detailed analysis.

Statements of Decision and published court decisions from a state mandate determination by the Board of Control or the Commission are exempt from this requirement. When an omnibus bill is pled or cited, the requester shall file only the relevant pages of the statute, including the Legislative Counsel's Digest and the specific statutory changes at issue.

## 8. CERTIFICATION

*Read, sign, and date this section and insert at the end of the request for a new test claim decision.\**

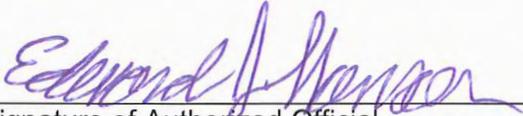
*This request for a new test claim decision is true and complete to the best of my personal knowledge, information, or belief.*

**Ed Hanson**

Print or Type Name of Authorized Official

**Principal Program Budget Analyst**

Print or Type Title



Signature of Authorized Official

**June 27, 2018**

Date

\*If declarant for this certification is different from the contact identified in section 2 of the form, please provide the declarant's address, telephone number, fax number and e-mail address.

**Request to Adopt a New Test Claim Decision**  
**Department of Finance**  
**High School Exit Examination**  
**Section 5: Detailed Analysis**

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Summary of Mandate

The California High School Exit Examination (CAHSEE) was established in 1999 pursuant to Chapter 1, Statutes of 1999, and was required for students earning a high school diploma from traditional public high schools to successfully complete this exam.

The Commission on State Mandates (Commission) found, in the test claim statement of decision for the High School Exit Examination (00-TC-06) that Education Code Sections 60850 and 60851 and specified California Code of Regulations imposed a reimbursable state-mandated program on school districts within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514.

Chapter 572, Statutes of 2015, suspended the administration of the CAHSEE and the requirement that students must pass the CAHSEE to graduate high school for school years 2015-16 through 2017-18, and retroactively granted high school diplomas to grade 12 students who successfully fulfilled graduation requirements but did not graduate as a result of not passing the CAHSEE. Chapter 641, Statutes of 2017, repealed the authorizing statutes for the CAHSEE, effectively terminating the administration of the CAHSEE.

Pursuant to subdivision (c) of Government Code section 17570, the Department of Finance requests the Commission adopt a new test claim decision and amend the parameters and guidelines for the High School Exit Examination (00-TC-06) mandated program to reflect the subsequent changes in law pursuant to Chapter 572, Statutes of 2015, and Chapter 641, Statutes of 2017, that suspended and terminated, respectively, the required administration of the CAHSEE. Given the suspension and repeal of the authorizing statute, any required activities pursuant to the California Code of Regulations related to the CAHSEE are unsupported by statute and should no longer be a basis for mandated activities.

As a result of the change in law, the following activities are no longer reimbursable:

- Providing adequate notice to parents of transfer students that each student completing grade 12 is required to pass the CAHSEE as a condition of graduation.
- Maintaining documentation that adequate notice was provided to parents or guardians of the CAHSEE requirement.
- Determining whether English learners possess adequate skills to take the CAHSEE.
- Administering the CAHSEE to students as specified, maintaining records of students who take the CAHSEE as specified, and maintaining test security as specified.
- Reporting pupil and assessment data to the Superintendent of Public Instruction or independent evaluators.

**Request to Adopt a New Test Claim Decision**  
**Department of Finance**  
**High School Exit Examination**  
**Section 6: Declarations**

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According to the State Controller's Office April 30, 2018, "State Mandated Program Cost Report of Unpaid Claims and Deficiency Pursuant to Government Code Section 17562(b)(2)," school districts claimed \$13,061 in 2016-17, \$17,181 in 2015-16, and \$621,912 in 2014-15 for activities related to the CAHSEE.

The forgoing analysis provides substantiation that the reimbursable activities identified in the High School Exit Examination Statement of Decision (00-TC-06) cease to be eligible for reimbursements effective January 1, 2016. Therefore, based on the change in law, the state's liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero.

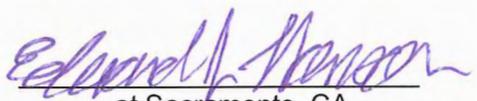
**Request to Adopt a New Test Claim Decision  
Department of Finance  
High School Exit Examination  
Section 6: Declarations**

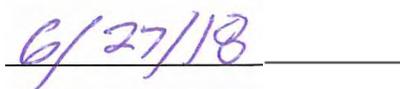
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DECLARATION OF ED HANSON  
DEPARTMENT OF FINANCE

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.

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.

  
at Sacramento, CA



**Request to Adopt a New Test Claim Decision  
Department of Finance  
High School Exit Examination  
Section 7: Documentation**

New Statute: Chapter 572, Statutes of 2015 (SB 172) ..... A  
New Statute: Chapter 641, Statutes of 2017 (AB 830) ..... B  
Old Statute: Chapter 9, Title 2 of the Education Code ..... C


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**SB-172 Pupil testing: high school exit examination: suspension.** (2015-2016)

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**Senate Bill No. 172**

CHAPTER 572

An act to amend Section 60640 of, to add Section 60851.5 to, and to add and repeal Section 60851.6 of, the Education Code, relating to pupil testing.

[ Approved by Governor October 07, 2015. Filed with Secretary of State October 07, 2015. ]

LEGISLATIVE COUNSEL'S DIGEST

SB 172, Liu. Pupil testing: high school exit examination: suspension.

Existing law requires the Superintendent of Public Instruction, with the approval of the State Board of Education, to develop a high school exit examination in English language arts and mathematics in accordance with state academic content standards. Existing law requires, commencing with the 2003-04 school year and each school year thereafter, each pupil completing grade 12 to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school.

This bill would suspend the administration of the high school exit examination and would remove the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school for each pupil completing grade 12, for the 2015-16, 2016-17, and 2017-18 school years. The bill would, until July 31, 2018, require the governing board or body of a local educational agency, as defined, and the State Department of Education on behalf of state special schools, to grant a diploma of graduation from high school to any pupil who completed grade 12 in the 2003-04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination.

Existing law establishes the California Assessment of Student Performance and Progress as the statewide system of pupil assessments, under which various assessments are required or authorized to be administered in public schools, as specified. Existing law requires the Superintendent, on or before March 1, 2016, to submit to the state board recommendations on expanding the California Assessment of Student Performance and Progress to include additional assessments, for consideration at a regularly scheduled public meeting, and to also submit those recommendations to the appropriate policy and fiscal committees of the Legislature and to the Director of Finance in accordance with specified requirements.

This bill would add a new requirement, that the Superintendent convene an advisory panel consisting of specified individuals to provide recommendations to the Superintendent on the continuation of the high school exit examination and on alternative pathways to satisfy specified high school graduation requirements, to those recommendations to be submitted by the Superintendent.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 60640 of the Education Code is amended to read:

**60640.** (a) There is hereby established the California Assessment of Student Performance and Progress, to be known as the CAASPP.

(b) Commencing with the 2013–14 school year, the CAASPP shall be composed of all of the following:

(1) (A) A consortium summative assessment in English language arts and mathematics for grades 3 to 8, inclusive, and grade 11 that measures content standards adopted by the state board.

(B) In the 2013–14 school year, the consortium summative assessment in English language arts and mathematics shall be a field test only, to enable the consortium to gauge the validity and reliability of these assessments and to conduct all necessary psychometric procedures and studies, including, but not necessarily limited to, achievement standard setting, and to allow the department to conduct studies regarding full implementation of the assessment system. These field tests and results shall not be used for any other purpose, including the calculation of any accountability measure.

(2) (A) Science grade level assessments in grades 5, 8, and 10 that measure content standards adopted pursuant to Section 60605, until a successor assessment is implemented pursuant to subparagraph (B).

(B) For science assessments, the Superintendent shall make a recommendation to the state board as soon as is feasible after the adoption of science content standards pursuant to Section 60605.85 regarding the assessment of the newly adopted standards. Before making recommendations, the Superintendent shall consult with stakeholders, including, but not necessarily limited to, California science teachers, individuals with expertise in assessing English learners and pupils with disabilities, parents, and measurement experts, regarding the grade level and type of assessment. The recommendations shall include cost estimates and a plan for implementation of at least one assessment in each of the following grade spans:

(i) Grades 3 to 5, inclusive.

(ii) Grades 6 to 9, inclusive.

(iii) Grades 10 to 12, inclusive.

(3) The California Alternate Performance Assessment in grades 2 to 11, inclusive, in English language arts and mathematics and science in grades 5, 8, and 10, which measures content standards adopted pursuant to Section 60605 until a successor assessment is implemented. The successor assessment shall be limited to the grades and subject areas assessed pursuant to paragraph (1) and subparagraph (B) of paragraph (2).

(4) The Early Assessment Program established by Chapter 6 (commencing with Section 99300) of Part 65 of Division 14 of Title 3.

(5) (A) A local educational agency may administer a primary language assessment aligned to the English language arts standards adopted pursuant to Section 60605, as it read on January 1, 2013, to pupils who are identified as limited English proficient and enrolled in any of grades 2 to 11, inclusive, until a subsequent primary language assessment aligned to the common core standards in English language arts adopted pursuant to Section 60605.8 is developed pursuant to subparagraph (E).

(B) If a local educational agency chooses to administer a primary language assessment to pupils identified as limited English proficient and enrolled in any of grades 2 to 11, inclusive, pursuant to subparagraph (A), it shall notify the department in a manner to be determined by the department and the costs shall be paid by the state and included as part of the testing contract, and the department shall provide the local educational agency a per pupil apportionment for administering the assessment pursuant to subdivision (I).

(C) The Superintendent shall consult with stakeholders, including assessment and English learner experts, to determine the content and purpose of a stand-alone language arts summative assessment in primary languages other than English that aligns with the English language arts content standards. The Superintendent shall consider the appropriate purpose for this assessment, including, but not necessarily limited to, support for the State Seal of Biliteracy and accountability. It is the intent of the Legislature that an assessment developed pursuant to this section be included in the state accountability system.

(D) The Superintendent shall report and make recommendations to the state board at a regularly scheduled public meeting no sooner than one year after the first full administration of the consortium computer-adaptive

assessments in English language arts and mathematics summative assessments in grades 3 to 8, inclusive, and grade 11, regarding an implementation timeline and estimated costs of a stand-alone language arts summative assessment in primary languages other than English.

(E) The Superintendent shall develop, and the state board shall adopt, a primary language assessment. The Superintendent shall administer this assessment no later than the 2016–17 school year.

(F) This paragraph shall be operative only to the extent that funding is provided in the annual Budget Act or another statute for the purpose of this section.

(c) No later than March 1, 2016, the Superintendent shall submit to the state board recommendations on expanding the CAASPP to include additional assessments, for consideration at a regularly scheduled public meeting. The Superintendent shall also submit these recommendations to the appropriate policy and fiscal committees of the Legislature and to the Director of Finance in accordance with all of the following:

(1) In consultation with stakeholders, including, but not necessarily limited to, California teachers, individuals with expertise in assessing English learners and pupils with disabilities, parents, and measurement experts, the Superintendent shall make recommendations regarding assessments, including the grade level, content, and type of assessment. These recommendations shall take into consideration the assessments already administered or planned pursuant to subdivision (b). The Superintendent shall consider the use of consortium-developed assessments, various item types, computer-based testing, and a timeline for implementation.

(2) The recommendations shall consider assessments in subjects, including, but not necessarily limited to, history-social science, technology, visual and performing arts, and other subjects as appropriate, as well as English language arts, mathematics, and science assessments to augment the assessments required under subdivision (b), and the use of various assessment options, including, but not necessarily limited to, computer-based tests, locally scored performance tasks, and portfolios.

(3) The recommendations shall include the use of an assessment calendar that would schedule the assessments identified pursuant to paragraph (2) over several years, the use of matrix sampling, if appropriate, and the use of population sampling.

(4) The recommendations shall include a timeline for test development, and shall include cost estimates for subject areas, as appropriate.

(5) Upon approval by the state board and the appropriation of funding for this purpose, the Superintendent shall develop and administer approved assessments. The state board shall approve test blueprints, achievement level descriptors, testing periods, performance standards, and a reporting plan for each approved assessment.

(6) The Superintendent shall convene an advisory panel, consisting of, but not necessarily limited to, secondary teachers, school administrators, school board members, parents, a student chosen from among the two finalists who were not appointed by the Governor to serve as the student member on the state board pursuant to Section 33000.5, representatives of a dropout recovery charter school operating pursuant to subdivision (g) of Section 47605.1, measurement experts, and individuals with expertise in assessing English learners and pupils with disabilities, to provide recommendations to the Superintendent on the continuation of the high school exit examination, described in Chapter 9 (commencing with Section 60850), and on alternative pathways to satisfy the high school graduation requirements pursuant to Sections 51224.5 and 51225.3.

(d) For the 2013–14 and 2014–15 school years, the department shall make available to local educational agencies Standardized Testing and Reporting Program test forms no longer required by the CAASPP. The cost of implementing this subdivision, including, but not necessarily limited to, shipping, printing, scoring, and reporting per pupil shall be the same for all local educational agencies, and shall not exceed the marginal cost of the assessment, including any cost the department incurs to implement this section. A local educational agency that chooses to administer an assessment pursuant to this subdivision shall do so at its own expense, and shall enter into an agreement for that purpose with a contractor, subject to the approval of the department.

(e) The Superintendent shall make available a paper and pencil version of any computer-based CAASPP assessment for use by pupils who are unable to access the computer-based version of the assessment for a maximum of three years after a new operational test is first administered.

(f) (1) From the funds available for that purpose, each local educational agency shall administer assessments to each of its pupils pursuant to subdivision (b). As allowable by federal statute, recently arrived English learner pupils are exempted from taking the assessment in English language arts. The state board shall establish a

testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year. The testing period established by the state board shall take into consideration the need of local educational agencies to provide makeup days for pupils who were absent during testing, as well as the need to schedule testing on electronic computing devices.

(2) For the 2013–14 school year, each local educational agency shall administer the field tests in a manner described by the department in consultation with the president or executive director of the state board. Additional participants in the field test beyond the representative sample may be approved by the department, and the department shall use existing contract savings to fund local educational agency participation in one or more tests per participant. Funds for this purpose shall be used to allow for maximum participation in the field tests across the state. To the extent savings in the current contract are not available to fully fund this participation, the department shall prorate available funds by test. Local educational agencies shall bear any additional costs to administer these assessments that are in excess of the contracted amount. With the approval of the state board and the Director of Finance, the department shall amend the existing assessment contract to accommodate field testing beyond the representative sample, and to allow for special studies using information collected from the field tests.

(g) From the funds available for that purpose, each local educational agency shall administer assessments as determined by the state board pursuant to paragraph (5) of subdivision (c).

(h) As feasible, the CAASPP field tests shall be conducted in a manner that will minimize the testing burden on individual schools. The CAASPP field tests shall not produce individual pupil scores unless it is determined that these scores are valid and reliable.

(i) The governing board of a school district may administer achievement tests in grades other than those required by this section as it deems appropriate.

(j) Subject to the approval of the state board, the department may make available to local educational agencies a primary language assessment aligned to the English language arts standards adopted pursuant to Section 60605, as it read on January 1, 2013, for assessing pupils who are enrolled in a dual language immersion program that includes the primary language of the assessment and who are either nonlimited English proficient or redesignated fluent English proficient until a subsequent primary language assessment aligned to the common core standards in English language arts adopted pursuant to Section 60605.8 is developed pursuant to paragraph (5) of subdivision (b). The cost for the assessment shall be the same for all local educational agencies and shall not exceed the marginal cost of the assessment, including any cost the department incurs to implement this section. A local educational agency that elects to administer a primary language assessment pursuant to this subdivision shall do so at its own expense and shall enter into an agreement for that purpose with the state testing contractor, subject to the approval of the department.

(k) Pursuant to Section 1412(a)(16) of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and the individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

(l) (1) The Superintendent shall apportion funds appropriated for these purposes to local educational agencies to enable them to meet the requirements of subdivisions (b) and (c).

(A) For the CAASPP field tests administered in the 2013–14 school year or later school years, the Superintendent shall apportion funds to local educational agencies if funds are specifically provided for this purpose in the annual Budget Act.

(B) The Superintendent shall apportion funds to local educational agencies to enable them to administer assessments used to satisfy the voluntary Early Assessment Program in the 2013–14 school year pursuant to paragraph (4) of subdivision (b).

(2) The state board annually shall establish the amount of funding to be apportioned to local educational agencies for each test administered and annually shall establish the amount that each contractor shall be paid for each test administered under the contracts required pursuant to Section 60643. The amounts to be paid to the contractors shall be determined by considering the cost estimates submitted by each contractor each September and the amount included in the annual Budget Act, and by making allowance for the estimated costs to local educational agencies for compliance with the requirements of subdivisions (b) and (c). The state board shall take into account changes to local educational agency test administration activities under the CAASPP, including, but not limited to, the number and type of tests administered and changes in computerized test

registration and administration procedures, when establishing the amount of funding to be apportioned to local educational agencies for each test administered.

(3) An adjustment to the amount of funding to be apportioned per test shall not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(m) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (l), and the payments made to the contractors under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are "General Fund revenues appropriated for school districts," as defined in subdivision (c) of Section 41202, for the applicable fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202, for that fiscal year.

(n) As a condition to receiving an apportionment pursuant to subdivision (l), a local educational agency shall report to the Superintendent all of the following:

(1) The pupils enrolled in the local educational agency in the grades in which assessments were administered pursuant to subdivisions (b) and (c).

(2) The pupils to whom an achievement test was administered pursuant to subdivisions (b) and (c) in the local educational agency.

(3) The pupils in paragraph (1) who were exempted from the test pursuant to this section.

(o) The Superintendent and the state board are authorized and encouraged to assist postsecondary educational institutions to use the assessment results of the CAASPP, including, but not necessarily limited to, the grade 11 consortium summative assessments in English language arts and mathematics, for academic credit, placement, or admissions processes.

(p) Subject to the availability of funds in the annual Budget Act for this purpose, and exclusive of the consortium assessments, the Superintendent, with the approval of the state board, annually shall release to the public test items from the achievement tests pursuant to Section 60642.5 administered in previous years. Where feasible and practicable, the minimum number of test items released per year shall be equal to 25 percent of the total number of test items on the test administered in the previous year.

(q) On or before July 1, 2014, Sections 850 to 868, inclusive, of Title 5 of the California Code of Regulations shall be revised by the state board to conform to the changes made to this section in the first year of the 2013-14 Regular Session. The state board shall adopt initial regulations as emergency regulations to immediately implement the CAASPP assessments, including, but not necessarily limited to, the administration, scoring, and reporting of the tests, as the adoption of emergency regulations is necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning of Section 11346.1 of the Government Code. The emergency regulations shall be followed by the adoption of permanent regulations, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

**SEC. 2.** Section 60851.5 is added to the Education Code, to read:

**60851.5.** Notwithstanding Section 60851, the administration of the high school exit examination, and the requirement that each pupil completing grade 12 successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school, shall be suspended for the 2015-16, 2016-17, and 2017-18 school years.

**SEC. 3.** Section 60851.6 is added to the Education Code, to read:

**60851.6.** (a) Notwithstanding Section 60851 or any other law, the governing board or body of a local educational agency, and the department on behalf of state special schools, shall grant a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination.

(b) For purposes of this section, "local educational agency" means a school district, county office of education, or charter school.

(c) This section shall remain in effect only until July 31, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before July 31, 2018, deletes or extends that date.



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**AB-830 High school exit examination: repeal.** (2017-2018)

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**Assembly Bill No. 830**

CHAPTER 641

An act to amend Sections 8421, 8423, 8484.1, 10805, 33126, 47605, 48070.6, 48800, 48980, 49600, 52052, 52302.8, 52335.12, 60605.6, 60900, 99222, 99223, 99224, and 99225 of, to add Section 51413 to, and to repeal Chapter 9 (commencing with Section 60850) of Part 33 of Division 4 of Title 2 of, the Education Code, to amend Section 11126 of the Government Code, and to amend Section 14530 of the Unemployment Insurance Code, relating to the high school exit examination.

[ Approved by Governor October 10, 2017. Filed with Secretary of State October 10, 2017. ]

LEGISLATIVE COUNSEL'S DIGEST

AB 830, Kalra. High school exit examination: repeal.

Existing law requires the Superintendent of Public Instruction, with the approval of the State Board of Education, to develop a high school exit examination in English language arts and mathematics in accordance with state academic content standards. Existing law requires each pupil completing grade 12 to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school, except for the 2015-16, 2016-17, and 2017-18 school years.

This bill would eliminate the high school exit examination and would remove it as a condition of receiving a diploma of graduation or a condition of graduation from high school.

The bill would also make clarifying, conforming, and nonsubstantive changes.

This bill would incorporate additional changes to Section 47605 of the Education Code proposed by AB 1360 to be operative only if this bill and AB 1360 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 8421 of the Education Code is amended to read:

**8421.** There is hereby established the 21st Century High School After School Safety and Enrichment for Teens program. The purpose of the program is to create incentives for establishing locally driven after school enrichment programs that partner schools and communities to provide academic support and safe, constructive alternatives for high school pupils in the hours after the regular schoolday, and that support college and career readiness.

(a) High school after school programs shall serve pupils in grades 9 to 12, inclusive.

(b) A high school after school program established pursuant to this article shall consist of the following two elements:

(1) (A) An academic assistance element that shall include, but need not be limited to, at least one of the following: tutoring, career exploration, homework assistance, or college preparation, including information about the Cal Grant Program established pursuant to Chapter 1.7 (commencing with Section 69430) of Part 42 of Division 5 of Title 3. The assistance shall be coordinated with the regular academic programs of the pupils.

(B) For purposes of this article, "career exploration" means activities that help pupils develop the knowledge and skills that are relevant to their career interests and reinforce academic content.

(2) An enrichment element that may include, but need not be limited to, community service, career and technical education, job readiness, opportunities for mentoring and tutoring younger pupils, service learning, arts, computer and technology training, physical fitness, and recreation activities.

(c) A program shall operate for a minimum of 15 hours per week.

(d) An entity may operate programs on one or multiple sites. If an entity plans to operate programs at multiple sites, only one application is required.

(e) A program may operate on a schoolsite or on another site approved by the department during the grant application process. A program located off school grounds shall not be approved unless both of the following criteria are met:

(1) Safe transportation is available to transport participating pupils if necessary.

(2) The program is at least as available and accessible as similar programs conducted on schoolsites.

(f) Applicants for grants pursuant to this article shall ensure that all of the following requirements are fulfilled, if applicable:

(1) The application includes a description of the activities that will be available for pupils and lists the program hours.

(2) The application includes an estimate of the following:

(A) The number of pupils expected to attend the program on a regular basis.

(B) The average hours of attendance per pupil.

(C) The percentage of pupils expected to attend the program less than three days a week, three days a week, and more than three days a week, for each quarter or semester during the grant period.

(3) The application documents the commitments of each partner to operate a program at a location or locations that are safe and accessible to participating pupils.

(4) The application certifies that pupils were involved in the design of the program and describes the extent of that involvement.

(5) The application identifies federal, state, and local programs that will be combined or coordinated with the high school after school program for the most effective use of public resources, and describes a plan for implementing the high school after school program beyond federal grant funding.

(6) The application has been approved by the school district, or the charter school governing body, and the principal of each participating school for each schoolsite or other site.

(7) The application includes a certification that the applicant has complied with the requirement in subdivision (b) of Section 8422.

(8) The application includes a certification that each applicant or partner in the application agrees to do all of the following:

(A) Assume responsibility for the quality of the program.

(B) Follow all fiscal reporting and auditing standards required by the department.

(C) Provide the following information on participating pupils to the department:

- (i) Schoolday attendance rates.
- (ii) Program attendance.
- (D) Acknowledge that program evaluations will be based upon the criteria in Section 8427.
- (9) Certify that the applicant has complied with all federal requirements in preparing and submitting the application.
- (g) The department shall not establish minimum attendance requirements for individual pupils.
- (h) It is the intent of the Legislature that, to the extent possible, the department require applicants to submit the information required by this section in a short and concise manner.

**SEC. 2.** Section 8423 of the Education Code is amended to read:

**8423.** (a) (1) The department shall select grantees to participate in the 21st Century High School After School Safety and Enrichment for Teens program from among applicants that apply on forms and in a manner prescribed by the department. To the extent possible, the selection of applicants by the department shall result in an equitable distribution of grant awards to applicants in northern, southern, and central California, and in urban and rural areas of the state.

(2) For purposes of paragraph (1), the following terms shall have the following meanings:

(A) "Central California" means California County Superintendents Educational Services Association regions five to eight, inclusive.

(B) "Northern California" means California County Superintendents Educational Services Association regions one to four, inclusive.

(C) "Southern California" means California County Superintendents Educational Services Association regions 9 to 11, inclusive.

(D) "Urban and rural areas" shall be as defined by the United States Census Bureau.

(b) The department shall consider the following criteria in awarding grants:

(1) Strength of the educational element and coordination with state academic standards and other academic interventions.

(2) Strength of the enrichment element.

(3) Evidence of community collaboration, including demonstrated support of the principal and staff from participating schools.

(4) A description of the manner in which programs will provide a safe physical and emotional environment and opportunities for relationship building, and promote active pupil engagement.

(5) A description of the manner in which the program design will be periodically reexamined in order to maintain strong pupil interest.

(6) A description of plans to attract pupils, particularly pupils considered at risk or in need of academic support, on a regular basis.

(c) The application shall certify all of the following:

(1) Completion of an assessment of pupils' preferences for program activities.

(2) Access to, and availability of, computers and technology.

(3) Inclusion of a nutritional snack, meal, or both, and a physical activity element.

(4) That the program will meet all of the evaluation requirements.

(5) Fiscal accountability.

(6) Collection and use of pupil social, behavioral, or skill development data collection to support quality program improvement processes. These pupil data outcomes may relate to specific social-emotional competencies, including, but not necessarily limited to, social skills, self-control, academic mindset, perseverance, conflict resolution, and school connectedness.

**SEC. 3.** Section 8484.1 of the Education Code is amended to read:

**8484.1.** To the extent consistent with federal and state privacy laws, local educational agency grantees funded pursuant to this article and Article 22.6 (commencing with Section 8484.7) may submit the following pupil data to an operator of an after school program or summer program, or both, with which the local educational agency has a contract:

- (a) Schoolday attendance data.
- (b) Statewide test and assessment scores.
- (c) English language development test placement or reclassification scores.
- (d) California Healthy Kids Survey results in aggregate form.
- (e) Pupil engagement and behavioral data.
- (f) Other academic measures, including grades and course completion.

**SEC. 4.** Section 10805 of the Education Code is amended to read:

**10805.** (a) Notwithstanding any other law, the Commission on Teacher Credentialing, the state board, and the department shall provide to the State Chief Information Officer the individual nonpersonally identifiable or aggregate data related to teacher distribution, educator credential status, pupil assessment and accountability, or other pupil academic and achievement data, including, but not limited to, data generated from, or related to, the California Assessment of Student Performance and Progress, the English language development test, the Academic Performance Index (API), and adequate yearly progress data and calculations, graduation rates, pupils who dropout of school, and demographics of pupils and teachers.

(b) The data provided pursuant to the section shall be provided as follows:

- (1) In a format that is agreeable to all relevant parties.
- (2) In a timely manner, according to a schedule agreed upon by all relevant parties.
- (3) At no cost to the State Chief Information Officer.

(c) The State Chief Information Officer may release the information provided pursuant to subdivision (a) in any of the following manners:

- (1) On paper at a single location that is accessible to the public.
- (2) Electronically at a single location that is accessible to the public.
- (3) Electronically via the Internet.

(d) The State Chief Information Officer shall ensure that the use of this data is in compliance with applicable state and federal privacy laws.

**SEC. 5.** Section 33126 of the Education Code is amended to read:

**33126.** (a) The school accountability report card shall provide data by which a parent can make meaningful comparisons between public schools that will enable him or her to make informed decisions on the school in which to enroll his or her children.

(b) The school accountability report card shall include, but is not limited to, assessment of the following school conditions:

- (1) (A) Pupil achievement by grade level, as measured by the standardized testing and reporting programs pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(B) After the state develops a statewide assessment system pursuant to Chapter 5 (commencing with Section 60600) and Chapter 6 (commencing with Section 60800) of Part 33, pupil achievement by grade level, as measured by the results of the statewide assessment.

(2) Progress toward reducing dropout rates, including the one-year dropout rate listed in the California Basic Educational Data System or a successor data system for the schoolsite over the most recent three-year period, and the graduation rate, as defined by the state board, over the most recent three-year period when available pursuant to Section 52052.

(3) Estimated expenditures per pupil and types of services funded. The assessment of estimated expenditures per pupil shall reflect the actual salaries of personnel assigned to the schoolsite. The assessment of estimated expenditures per pupil shall be reported in total, shall be reported in subtotal by restricted and by unrestricted source, and shall include a reporting of the average of actual salaries paid to certificated instructional personnel at that schoolsite.

(4) Progress toward reducing class sizes and teaching loads, including the distribution of class sizes at the schoolsite by grade level and the average class size, using the California Basic Educational Data System or a successor data system information for the most recent three-year period.

(5) The total number of the school's fully credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials, any assignment of teachers outside their subject areas of competence, misassignments, including misassignments of teachers of English learners, and the number of vacant teacher positions for the most recent three-year period.

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

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

(6) (A) Quality and currency of textbooks and other instructional materials, including whether textbooks and other materials meet state standards and are adopted by the state board for kindergarten and grades 1 to 8, inclusive, and adopted by the governing boards of school districts for grades 9 to 12, inclusive, and the ratio of textbooks per pupil and the year the textbooks were adopted.

(B) The availability of sufficient textbooks and other instructional materials, as determined pursuant to Section 60119, for each pupil, including English learners, in each of the areas enumerated in clauses (i) to (iv), inclusive. If the governing board determines, pursuant to Section 60119, that there are insufficient textbooks or instructional materials, or both, it shall include information for each school in which an insufficiency exists, identifying the percentage of pupils who lack sufficient standards-aligned textbooks or instructional materials in each subject area. The subject areas to be included are all of the following:

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

(ii) Foreign language and health.

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

(iv) Visual and performing arts.

(7) The availability of qualified personnel to provide counseling and other pupil support services, including the ratio of academic counselors per pupil.

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

(9) The annual number of schooldays dedicated to staff development for the most recent three-year period.

(10) Suspension and expulsion rates for the most recent three-year period.

(11) For secondary schools, the percentage of graduates who have passed course requirements for entrance to the University of California and the California State University, including the course requirements for high school graduation pursuant to Section 51225.3, and the percentage of pupils enrolled in those courses, as reported by the California Basic Educational Data System or any successor data system.

(12) The number of advanced placement courses offered, by subject.

(13) The Academic Performance Index, including the disaggregation of subgroups as set forth in Section 52052 and the decile rankings and a comparison of schools.

(14) Contact information pertaining to organized opportunities for parental involvement.

(15) Career technical education data measures, including all of the following:

(A) A list of programs offered by the school district in which pupils at the school may participate and that are aligned to the model curriculum standards adopted pursuant to Section 51226, and program sequences offered by the school district. The list should identify courses conducted by a regional occupational center or program, and those conducted directly by the school district.

(B) A listing of the primary representative of the career technical advisory committee of the school district and the industries represented.

(C) The number of pupils participating in career technical education.

(D) The percentage of pupils that complete a career technical education program and earn a high school diploma.

(E) The percentage of career technical education courses that are sequenced or articulated between a school and institutions of postsecondary education.

(c) If the Commission on State Mandates finds a school district is eligible for a reimbursement of costs incurred complying with this section, the school district shall be reimbursed only if the information provided in the school accountability report card is accurate, as determined by the annual audit performed pursuant to Section 41020. If the information is determined to be inaccurate, the school district remains eligible for reimbursement if the information is corrected by May 15.

(d) It is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report cards, as described in this section, and ensure that all parents receive a copy of the report card; to ensure that the report cards are easy to read and understandable by parents; to ensure that local educational agencies with access to the Internet make available current copies of the report cards through the Internet; and to ensure that administrators and teachers are available to answer any questions regarding the report cards.

**SEC. 6.** Section 47605 of the Education Code is amended to read:

**47605.** (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within a school district may be circulated by one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district if each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions is met:

(A) The petition is signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the charter school for its first year of operation.

(B) The petition is signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the charter school during its first year of operation.

(2) A petition that proposes to convert an existing public school to a charter school that would not be eligible for a loan pursuant to subdivision (c) of Section 41365 may be circulated by one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for

review after the petition is signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites shall request a material revision to its charter and shall notify the authority that granted its charter of those additional locations. The authority that granted its charter shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved, there shall be a material revision to the charter school's charter.

(5) A charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county in which that school district is located, if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and either of the following circumstances exists:

(A) The school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the school chooses to locate.

(B) The site is needed for temporary use during a construction or expansion project.

(6) Commencing January 1, 2003, a petition to establish a charter school shall not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the school district, other employees of the school district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that the establishment of charter schools should be encouraged. The governing board of the school district shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) (i) The educational program of the charter school, designed, among other things, to identify those whom the charter school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(ii) The annual goals for the charter school for all pupils and for each subgroup of pupils identified pursuant to Section 52052, to be achieved in the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, or the nature of the program operated, by the charter school, and specific annual

actions to achieve those goals. A charter petition may identify additional school priorities, the goals for the school priorities, and the specific annual actions to achieve those goals.

(iii) If the proposed charter school will serve high school pupils, the manner in which the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the "A to G" admissions criteria may be considered to meet college entrance requirements.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the charter school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the charter school's educational program. Pupil outcomes shall include outcomes that address increases in pupil academic achievement both schoolwide and for all groups of pupils served by the charter school, as that term is defined in subparagraph (B) of paragraph (3) of subdivision (a) of Section 47607. The pupil outcomes shall align with the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, or the nature of the program operated, by the charter school.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured. To the extent practicable, the method for measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.

(D) The governance structure of the charter school, including, but not limited to, the process to be followed by the charter school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the charter school.

(F) The procedures that the charter school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the charter school furnish the charter school with a criminal record summary as described in Section 44237.

(G) The means by which the charter school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) The rights of an employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) The procedures to be used if the charter school closes. The procedures shall ensure a final audit of the charter school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

(6) The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall, on a regular basis, consult with their parents, legal guardians, and teachers regarding the charter school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against a pupil on the basis of the characteristics listed in Section 220. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or legal guardian, within this state, except that an existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the charter school.

(B) If the number of pupils who wish to attend the charter school exceeds the charter school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the school district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and shall not take any action to impede the charter school from expanding enrollment to meet pupil demand.

(3) If a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason, the charter school shall notify the superintendent of the school district of the pupil's last known address within 30 days, and shall, upon request, provide that school district with a copy of the cumulative record of the pupil, including a transcript of grades or report card, and health information. This paragraph applies only to pupils subject to compulsory full-time education pursuant to Section 48200.

(e) The governing board of a school district shall not require an employee of the school district to be employed in a charter school.

(f) The governing board of a school district shall not require a pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the charter school, including, but not limited to, the facilities to be used by the charter school, the manner in which administrative services of the charter school are to be provided, and potential civil liability effects, if any, upon the charter school and upon the school district. The description of the facilities to be used by the charter school shall specify where the charter school intends to locate. The petitioner or petitioners also shall be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the governing board of the school district shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the department under Section 54032, as that section read before July 19, 2006.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the department, and the state board.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The county board of education shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the state board, and the state board may approve the petition, in accordance with subdivision (b). A charter school that receives approval of its petition

from a county board of education or from the state board on appeal shall be subject to the same requirements concerning geographic location to which it would otherwise be subject if it received approval from the entity to which it originally submitted its petition. A charter petition that is submitted to either a county board of education or to the state board shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

(2) In assuming its role as a chartering agency, the state board shall develop criteria to be used for the review and approval of charter school petitions presented to the state board. The criteria shall address all elements required for charter approval, as identified in subdivision (b), and shall define "reasonably comprehensive," as used in paragraph (5) of subdivision (b), in a way that is consistent with the intent of this part. Upon satisfactory completion of the criteria, the state board shall adopt the criteria on or before June 30, 2001.

(3) A charter school for which a charter is granted by either the county board of education or the state board based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) If either the county board of education or the state board fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny the petition shall be subject to judicial review.

(5) The state board shall adopt regulations implementing this subdivision.

(6) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the department and the state board.

(k) (1) The state board may, by mutual agreement, designate its supervisory and oversight responsibilities for a charter school approved by the state board to any local educational agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local educational agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the state board.

(3) A charter school that is granted its charter through an appeal to the state board and elects to seek renewal of its charter shall, before expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the charter school's petition for renewal, the charter school may petition the state board for renewal of its charter.

(l) Teachers in charter schools shall hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and are subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

(m) A charter school shall transmit a copy of its annual, independent financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering entity, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering entity, and the department by December 15 of each year. This subdivision does not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

**SEC. 6.5.** Section 47605 of the Education Code is amended to read:

**47605.** (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within a school district may be circulated by one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district if each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions is met:

(A) The petition is signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the charter school for its first year of operation.

(B) The petition is signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the charter school during its first year of operation.

(2) A petition that proposes to convert an existing public school to a charter school that would not be eligible for a loan pursuant to subdivision (c) of Section 41365 may be circulated by one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after the petition is signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites shall request a material revision to its charter and shall notify the authority that granted its charter of those additional locations. The authority that granted its charter shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved, there shall be a material revision to the charter school's charter.

(5) A charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county in which that school district is located, if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and either of the following circumstances exists:

(A) The school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the school chooses to locate.

(B) The site is needed for temporary use during a construction or expansion project.

(6) Commencing January 1, 2003, a petition to establish a charter school shall not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the school district, other employees of the school district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that the establishment of charter schools should be encouraged. The governing board of the school district shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) (i) The educational program of the charter school, designed, among other things, to identify those whom the charter school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(ii) The annual goals for the charter school for all pupils and for each subgroup of pupils identified pursuant to Section 52052, to be achieved in the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, or the nature of the program operated, by the charter school, and specific annual actions to achieve those goals. A charter petition may identify additional school priorities, the goals for the school priorities, and the specific annual actions to achieve those goals.

(iii) If the proposed charter school will serve high school pupils, the manner in which the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the "A to G" admissions criteria may be considered to meet college entrance requirements.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the charter school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the charter school's educational program. Pupil outcomes shall include outcomes that address increases in pupil academic achievement both schoolwide and for all groups of pupils served by the charter school, as that term is defined in subparagraph (B) of paragraph (3) of subdivision (a) of Section 47607. The pupil outcomes shall align with the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, or the nature of the program operated, by the charter school.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured. To the extent practicable, the method for measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.

(D) The governance structure of the charter school, including, but not limited to, the process to be followed by the charter school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the charter school.

(F) The procedures that the charter school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the charter school furnish the charter school with a criminal record summary as described in Section 44237.

(G) The means by which the charter school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

(H) Admission policies and procedures, consistent with subdivision (d).

(I) The manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed, disenrolled, dismissed, transferred, or terminated from the charter school for any reason. These procedures, at a minimum, shall include an explanation of how the charter school will comply with federal and state constitutional procedural and substantive due process requirements that is consistent with all of the following:

(i) For suspensions of fewer than 10 days, provide oral or written notice of the charges against the pupil and, if the pupil denies the charges, an explanation of the evidence that supports the charges and an opportunity for the pupil to present his or her side of the story.

(ii) For suspensions of 10 days or more and all other expulsions for disciplinary reasons, both of the following:

(I) Provide timely, written notice of the charges against the pupil and an explanation of the pupil's basic rights.

(II) Provide a hearing adjudicated by a neutral officer within a reasonable number of days at which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses, and at which the pupil has the right to bring legal counsel or an advocate.

(iii) Contain a clear statement that no pupil shall be involuntarily removed, disenrolled, dismissed, transferred, or terminated by the charter school for any reason unless the parent or guardian of the pupil has been provided written notice of intent to remove, disenroll, dismiss, transfer, or terminate the pupil no less than five schooldays before the effective date of the action. The written notice shall be in the native language of the pupil or the pupil's parent or guardian or, if the pupil is a foster child or youth or a homeless child or youth, the pupil's educational rights holder, and shall inform him or her of the right to initiate the procedures specified in clause (ii) before the effective date of the action. If the pupil's parent, guardian, or educational rights holder initiates the procedures specified in clause (ii), the pupil shall remain enrolled and shall not be removed, disenrolled, dismissed, transferred, or terminated until the charter school issues a final decision. For purposes of this clause, "involuntarily removed, disenrolled, dismissed, transferred, or terminated" does not include suspensions specified in clauses (i) and (ii).

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) The rights of an employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) The procedures to be used if the charter school closes. The procedures shall ensure a final audit of the charter school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

(6) The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall, on a regular basis, consult with their parents, legal guardians, and teachers regarding the charter school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against a pupil on the basis of the characteristics listed in Section 220. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or legal guardian, within this state, except that an existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the charter school.

(B) If the number of pupils who wish to attend the charter school exceeds the charter school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the school district except as provided for in Section 47614.5. Preferences, including, but not limited to, siblings of pupils admitted or attending the charter school and children of the charter school's teachers, staff, and founders identified in the initial charter, may also be permitted by the chartering authority on an individual charter school basis. Priority order for any preference shall be determined in the charter petition in accordance with all of the following:

(i) Each type of preference shall be approved by the chartering authority at a public hearing.

(ii) Preferences shall be consistent with federal law, the California Constitution, and Section 200.

(iii) Preferences shall not result in limiting enrollment access for pupils with disabilities, academically low-achieving pupils, English learners, neglected or delinquent pupils, homeless pupils, or pupils who are economically disadvantaged, as determined by eligibility for any free or reduced-price meal program, foster youth, or pupils based on nationality, race, ethnicity, or sexual orientation.

(iv) In accordance with Section 49011, preferences shall not require mandatory parental volunteer hours as a criterion for admission or continued enrollment.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and shall not take any action to impede the charter school from expanding enrollment to meet pupil demand.

(3) If a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason, the charter school shall notify the superintendent of the school district of the pupil's last known address within 30 days, and shall, upon request, provide that school district with a copy of the cumulative record of the pupil, including report cards or a transcript of grades, and health information. If the pupil is subsequently expelled or leaves the school district without graduating or completing the school year for any reason, the school district shall provide this information to the charter school within 30 days if the charter school demonstrates that the pupil had been enrolled in the charter school. This paragraph applies only to pupils subject to compulsory full-time education pursuant to Section 48200.

(e) The governing board of a school district shall not require an employee of the school district to be employed in a charter school.

(f) The governing board of a school district shall not require a pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the charter school, including, but not limited to, the facilities to be used by the charter school, the manner in which administrative services of the charter school are to be provided, and potential civil liability effects, if any, upon the charter school and upon the school district. The description of the facilities to be used by the charter school shall specify where the charter school intends to locate. The petitioner or petitioners also shall be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the governing board of the school district shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the department under Section 54032, as that section read before July 19, 2006.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the department, and the state board.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The county board of education shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the state board, and the state board may approve the petition, in accordance with subdivision (b). A charter school that receives approval of its petition from a county board of education or from the state board on appeal shall be subject to the same requirements concerning geographic location to which it would otherwise be subject if it received approval from the entity to which it originally submitted its petition. A charter petition that is submitted to either a county board of education or to the state board shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

(2) In assuming its role as a chartering agency, the state board shall develop criteria to be used for the review and approval of charter school petitions presented to the state board. The criteria shall address all elements required for charter approval, as identified in subdivision (b), and shall define "reasonably comprehensive," as

used in paragraph (5) of subdivision (b), in a way that is consistent with the intent of this part. Upon satisfactory completion of the criteria, the state board shall adopt the criteria on or before June 30, 2001.

(3) A charter school for which a charter is granted by either the county board of education or the state board based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) If either the county board of education or the state board fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny the petition shall be subject to judicial review.

(5) The state board shall adopt regulations implementing this subdivision.

(6) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the department and the state board.

(k) (1) The state board may, by mutual agreement, designate its supervisory and oversight responsibilities for a charter school approved by the state board to any local educational agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local educational agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the state board.

(3) A charter school that is granted its charter through an appeal to the state board and elects to seek renewal of its charter shall, before expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the charter school's petition for renewal, the charter school may petition the state board for renewal of its charter.

(l) Teachers in charter schools shall hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and are subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

(m) A charter school shall transmit a copy of its annual, independent financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering entity, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering entity, and the department by December 15 of each year. This subdivision does not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

(n) A charter school may encourage parental involvement, but shall notify the parents and guardians of applicant pupils and currently enrolled pupils that parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school.

**SEC. 7.** Section 48070.6 of the Education Code is amended to read:

**48070.6.** (a) On or before August 1, 2011, and annually thereafter, utilizing data produced by the California Longitudinal Pupil Achievement Data System pursuant to Section 60900 and other available data, the Superintendent shall submit to the Governor, the Legislature, and the state board a report that shall be called the Annual Report on Dropouts in California. The report shall include, but not be limited to, all of the following:

(1) One-year dropout rates for each of grades 7 to 12, inclusive.

(2) Four-year cohort dropout rates for grades 9 to 12, inclusive.

(3) Two- or three-year cohort dropout rates, as appropriate, for middle schools.

(4) Grade 9 to grade 10 promotion rates.

(5) Percentage of high school pupils for each of grades 9 to 12, inclusive, who are on track to earn sufficient credits to graduate.

(6) The average number of nonpromotional school moves that pupils make between grades 6 to 12, inclusive.

- (7) "Full-year" dropout rates for alternative schools, including dropout recovery high schools, calculated using a methodology developed by the Superintendent to appropriately reflect dropout rates in each type of alternative school.
- (8) An explanation of the methodology or methodologies used to calculate "full-year" dropout rates for alternative schools pursuant to paragraph (7).
- (9) Other available data relating to dropout or graduation rates or pupil progress toward high school graduation.
- (b) When cohort dropout rates can be calculated accurately using longitudinal data, the rates described in paragraph (3) of subdivision (a) shall be replaced by dropout rates for cohorts of pupils entering middle school.
- (c) When data is available, the report shall also include all of the following:
- (1) Rates at which pupils graduate in four, five, and six years, pursuant to subparagraph (A) of paragraph (4) of subdivision (a) of Section 52052.
  - (2) Percentage of high school graduates and dropouts who completed courses that are certified by the University of California as meeting admission requirement criteria for the University of California and California State University systems.
  - (3) Percentage of high school graduates and dropouts who completed two or more classes in career technical education.
  - (4) Percentage of high school graduates and dropouts who completed both course sequences described in paragraphs (2) and (3).
  - (5) Behavioral data by school and school district, including suspensions and expulsions.
  - (6) Truancy rates.
  - (7) GED earning rates.
  - (8) Chronic absentee rates, as defined in Section 60901.
- (d) If possible, the data listed in subdivisions (a) and (b) shall be presented in the report, organized as follows:
- (1) By state.
  - (2) By county.
  - (3) By school district, both including and excluding charter schools.
  - (4) By school.
- (e) The report shall include data from alternative middle and high schools, including continuation high schools, community day schools, juvenile court schools, special schools, opportunity schools, and schools attended by wards of the Department of Corrections and Rehabilitation, Division of Juvenile Justice.
- (f) The report may include relevant data on school climate and pupil engagement from the California Healthy Kids Survey.
- (g) If possible, the data listed in subdivisions (a) and (b) shall be presented for the following subgroups, if the subgroup consists of at least 50 pupils, and the subgroup constitutes at least 15 percent of the total population of pupils at a school:
- (1) Grade level.
  - (2) Ethnicity.
  - (3) Gender.
  - (4) Low socioeconomic status.
  - (5) English learners.
  - (6) Special education status.

(h) The first Annual Report on Dropouts in California shall include data from the most recent year. Subsequent annual reports shall include data from the most recent year and, at a minimum, the two prior years, so that comparisons can be made easily.

(i) The Superintendent or his or her designee shall make an oral presentation of the contents of the report to the state board at a regularly scheduled meeting of the state board.

(j) The Superintendent shall make the contents of the report available on the department's Internet Web site in a format that is easy for the public to access and understand.

(k) If inclusion of school-level data would render the written report unwieldy, the data may be omitted from the written report and posted on the department's Internet Web site.

(l) It is the intent of the Legislature that the report prepared by the Superintendent be usable by schools, school districts, policymakers, researchers, parents, and the public, for purposes of identifying and understanding trends, causal relations, early warning indicators, and potential points of intervention to address the high rate of dropouts in California.

(m) For purposes of this section, dropouts shall be defined using the exit/withdrawal codes developed by the department.

(n) For purposes of this section, "dropout recovery high school" has the same meaning as defined in subparagraph (D) of paragraph (4) of subdivision (a) of Section 52052.

**SEC. 8.** Section 48800 of the Education Code is amended to read:

**48800.** (a) The governing board of a school district may determine which pupils would benefit from advanced scholastic or vocational work. The intent of this section is to provide educational enrichment opportunities for a limited number of eligible pupils, rather than to reduce current course requirements of elementary and secondary schools, and also to help ensure a smoother transition from high school to college for pupils by providing them with greater exposure to the collegiate atmosphere. The governing board of a school district may authorize those pupils, upon recommendation of the principal of the pupil's school of attendance, and with parental consent, to attend a community college during any session or term as special part-time or full-time students and to undertake one or more courses of instruction offered at the community college level.

(b) If the governing board of a school district denies a request for a special part-time or full-time enrollment at a community college for any session or term for a pupil who is identified as highly gifted, the governing board shall issue its written recommendation and the reasons for the denial within 60 days. The written recommendation and denial shall be issued at the next regularly scheduled board meeting that falls at least 30 days after the request has been submitted.

(c) A pupil shall receive credit for community college courses that he or she completes at the level determined appropriate by the governing boards of the school district and community college district.

(d) (1) The principal of a school may recommend a pupil for community college summer session only if that pupil meets all of the following criteria:

(A) Demonstrates adequate preparation in the discipline to be studied.

(B) Exhausts all opportunities to enroll in an equivalent course, if any, at his or her school of attendance.

(2) For any particular grade level, a principal shall not recommend for community college summer session attendance more than 5 percent of the total number of pupils who completed that grade immediately before the time of recommendation.

(3) A high school pupil recommended by his or her principal for enrollment in a course shall not be included in the 5-percent limitation of pupils allowed to be recommended pursuant to paragraph (2) if the course in which the pupil is enrolled is part of a College and Career Access Pathways (CCAP) program established pursuant to Section 76004 in which a majority of the pupils served are unduplicated pupils, as defined in Section 42238.02, the course meets one of the criteria listed in subparagraphs (A) and (B), and the high school principal who recommends the pupil for enrollment provides the Chancellor of the California Community Colleges, upon the request of that office, with the data required for purposes of paragraph (4).

(A) The course is a lower division, college-level course for credit that is designated as part of the Intersegmental General Education Transfer Curriculum or applies toward the general education breadth requirements of the California State University.

(B) The course is a college-level, occupational course for credit assigned a priority code of "A," "B," or "C," pursuant to the Student Accountability Model, as defined by the Chancellor of the California Community Colleges and reported in the management information system, and the course is part of a sequence of vocational or career technical education courses leading to a degree or certificate in the subject area covered by the sequence.

(4) On or before March 1 of each year, the Chancellor of the California Community Colleges shall report to the Department of Finance the number of pupils recommended pursuant to paragraph (3) who enroll in community college summer session courses and who receive a passing grade. The information in this report may be submitted with the report required by subdivision (c) of Section 76002.

(5) The Board of Governors of the California Community Colleges shall not include enrollment growth attributable to paragraph (3) as part of its annual budget request for the California Community Colleges.

(6) Notwithstanding Article 3 (commencing with Section 33050) of Chapter 1 of Part 20 of Division 2, compliance with this subdivision shall not be waived.

(e) Paragraphs (3), (4), and (5) of subdivision (d) shall become inoperative on January 1, 2020.

**SEC. 9.** Section 48980 of the Education Code is amended to read:

**48980.** (a) At the beginning of the first semester or quarter of the regular school term, the governing board of each school district shall notify the parent or guardian of a minor pupil regarding the right or responsibility of the parent or guardian under Sections 35291, 46014, 48205, 48207, 48208, 49403, 49423, 49451, 49472, and 51938 and Chapter 2.3 (commencing with Section 32255) of Part 19 of Division 1 of Title 1.

(b) The notification also shall advise the parent or guardian of the availability of individualized instruction as prescribed by Section 48206.3, and of the program prescribed by Article 9 (commencing with Section 49510) of Chapter 9.

(c) The notification also shall advise the parents and guardians of all pupils attending a school within the school district of the schedule of minimum days and pupil-free staff development days, and if minimum or pupil-free staff development days are scheduled thereafter, the governing board of the school district shall notify parents and guardians of the affected pupils as early as possible, but not later than one month before the scheduled minimum or pupil-free day.

(d) The notification also may advise the parent or guardian of the importance of investing for future college or university education for their children and of considering appropriate investment options, including, but not limited to, United States savings bonds.

(e) Each school district that elects to provide a fingerprinting program pursuant to Article 10 (commencing with Section 32390) of Chapter 3 of Part 19 of Division 1 of Title 1 shall inform parents or guardians of the program as specified in Section 32390.

(f) The notification also shall include a copy of the written policy of the school district on sexual harassment established pursuant to Section 231.5, as it relates to pupils.

(g) The notification shall advise the parent or guardian of all existing statutory attendance options and local attendance options available in the school district. This notification component shall include all options for meeting residency requirements for school attendance, programmatic options offered within the local attendance areas, and any special programmatic options available on both an interdistrict and intradistrict basis. This notification component also shall include a description of all options, a description of the procedure for application for alternative attendance areas or programs, an application form from the school district for requesting a change of attendance, and a description of the appeals process available, if any, for a parent or guardian denied a change of attendance. The notification component also shall include an explanation of the existing statutory attendance options, including, but not limited to, those available under Section 35160.5, Chapter 5 (commencing with Section 46600) of Part 26, and subdivision (b) of Section 48204. The department shall produce this portion of the notification and shall distribute it to all school districts.

(h) It is the intent of the Legislature that the governing board of each school district annually review the enrollment options available to the pupils within its school district and that the school districts strive to make available enrollment options that meet the diverse needs, potential, and interests of the pupils of California.

(i) The notification shall advise the parent or guardian that a pupil shall not have his or her grade reduced or lose academic credit for any absence or absences excused pursuant to Section 48205 if missed assignments and tests that can reasonably be provided are satisfactorily completed within a reasonable period of time, and shall include the full text of Section 48205.

(j) The notification shall advise the parent or guardian of the availability of state funds to cover the costs of advanced placement examination fees pursuant to Section 52242.

(k) The notification to the parent or guardian of a minor pupil enrolled in any of grades 9 to 12, inclusive, also shall include the information required pursuant to Section 51229.

(l) If a school district elects to allow a career technical education course to satisfy the requirement imposed by subparagraph (E) of paragraph (1) of subdivision (a) of Section 51225.3, the school district shall include, in the notification required pursuant to this section, both of the following:

(1) Information about the high school graduation requirements of the school district and how each requirement satisfies or does not satisfy the subject matter requirements for admission to the California State University and the University of California.

(2) A complete list of career technical education courses offered by the school district that satisfy the subject matter requirements for admission to the California State University and the University of California, and which of the specific college admission requirements these courses satisfy.

(m) A school district that elects to adopt a policy regarding the transfer of pupils pursuant to Article 1.5 (commencing with Section 48929) shall inform parents or guardians of the policy in the notification required pursuant to this section.

**SEC. 10.** Section 49600 of the Education Code is amended to read:

**49600.** (a) The governing board of a school district may provide a comprehensive educational counseling program for all pupils enrolled in the school district. It is the intent of the Legislature that a school district that provides educational counseling to its pupils implement a structured and coherent counseling program.

(b) For purposes of this section, "educational counseling" means specialized services provided by a school counselor possessing a valid credential with a specialization in pupil personnel services who is assigned specific times to directly counsel pupils.

(c) It is the intent of the Legislature that school counselors do all of the following:

(1) Engage with, advocate for, and provide support for, all pupils with respect to learning and achievement.

(2) Plan, implement, and evaluate programs to promote the academic, career, personal, and social development of all pupils, including pupils from low-income families, foster youth, homeless youth, undocumented youth, and pupils at all levels of academic, social, and emotional abilities.

(3) Use multiple sources of information to monitor and improve pupil behavior and achievement.

(4) Collaborate and coordinate with school and community resources.

(5) Promote and maintain a safe learning environment for all pupils by providing restorative justice practices, positive behavior interventions, and support services.

(6) Intervene to ameliorate school-related problems, including issues related to chronic absences.

(7) Use research-based strategies to reduce stigma, conflict, and pupil-to-pupil mistreatment and bullying.

(8) Improve school climate and pupil well-being.

(9) Enhance pupils' social and emotional competence, character, health, civic engagement, cultural literacy, and commitment to lifelong learning and the pursuit of high-quality educational programs.

- (10) Provide counseling interventions and support services for pupils classified as English learners, eligible for free or reduced-price meals, or foster youth, including enhancing equity and access to the education system and community services.
- (11) Engage in continued development as a professional school counselor.
- (d) Educational counseling shall include academic counseling, in which pupils receive counseling in the following areas:
- (1) Development and implementation, with parental involvement, of the pupil's immediate and long-range educational plans.
  - (2) Optimizing progress towards achievement of proficiency standards.
  - (3) Completion of the required curriculum in accordance with the pupil's needs, abilities, interests, and aptitudes.
  - (4) Academic planning for access and success in higher education programs, including advisement on courses needed for admission to public colleges and universities, standardized admissions tests, and financial aid.
  - (5) Career and vocational counseling, in which pupils are assisted in doing all of the following:
    - (A) Planning for the future, including, but not limited to, identifying personal interests, skills, and abilities, career planning, course selection, and career transition.
    - (B) Becoming aware of personal preferences and interests that influence educational and occupational exploration, career choice, and career success.
    - (C) Developing realistic perceptions of work, the changing work environment, and the effect of work on lifestyle.
    - (D) Understanding the relationship between academic achievement and career success, and the importance of maximizing career options.
    - (E) Understanding the value of participating in career technical education and work-based learning activities and programs, including, but not limited to, service learning, regional occupational centers and programs, partnership programs, job shadowing, and mentoring experiences.
    - (F) Understanding the need to develop essential employable skills and work habits.
    - (G) Understanding the variety of four-year colleges and universities and community college vocational and technical preparation programs, as well as admission criteria and enrollment procedures.
- (e) Educational counseling may also include counseling in any of the following:
- (1) Individualized review of the academic and department records of a pupil.
  - (2) Individualized review of the pupil's career goals, and the available academic and career technical education opportunities and community and workplace experiences available to the pupil that may support the pursuit of those goals.
  - (3) Opportunity for a counselor to meet with each pupil and, if practicable, the parents or legal guardian of the pupil to discuss the academic and department records of the pupil, his or her educational options, the coursework and academic progress needed for satisfactory completion of middle or high school, education opportunities at community colleges, eligibility for admission to a four-year institution of postsecondary education, including the University of California and the California State University, and the availability of career technical education. The educational options discussed at the meeting shall include, to the extent these services are available, the college preparatory program and career technical education programs, including regional occupational centers and programs and similar alternatives available to pupils within the school district.
  - (4) Identifying pupils who are at risk of not graduating with the rest of their class or do not have sufficient training to allow them to fully engage in their chosen career.
  - (5) In schools that enroll pupils in grades 10 and 12, developing a list of coursework and experience necessary to assist each pupil in his or her grade who has not satisfied, or is not on track to satisfy, the curricular requirements for admission to the University of California and the California State University, and to successfully transition to postsecondary education or employment.

(6) Developing a list of coursework and experience necessary to assist each pupil in middle school to successfully transition to high school and meet all graduation requirements.

(7) In schools that enroll pupils in grades 6 to 12, inclusive, developing a list of coursework and experience necessary to assist each pupil to begin to satisfy the curricular requirements for admission to the University of California and the California State University.

(8) Providing a copy of the lists developed pursuant to paragraphs (6) and (7) to a pupil and his or her parent or legal guardian, ensuring that the list of coursework and experience is part of the pupil's cumulative record.

(9) Developing a list of coursework and experience for a pupil enrolled in grade 12, including options for continuing his or her education if he or she fails to meet graduation requirements. These options shall include, but are not limited to, all of the following:

(A) Enrolling in an adult education program.

(B) Enrolling in a community college.

(C) Continuing enrollment in the pupil's current school district.

(D) Continuing to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12.

(10) Providing a copy of the list of coursework and experiences developed pursuant to paragraph (9) to the pupil and his or her parent or legal guardian, ensuring that the list of coursework and experience is part of the cumulative records of a pupil.

(11) Offering and scheduling an individual conference with each pupil in grades 10 and 12 who has not satisfied, or is not on track to satisfy, the curricular requirements for admission to the University of California and the California State University and to successfully transition to postsecondary education or employment, and providing the following information to the pupil and his or her parent or legal guardian:

(A) Programs, courses, and career technical education options available to the pupil as needed for satisfactory completion of middle or high school.

(B) Cumulative records and transcripts of the pupil.

(C) Results of standardized and diagnostic assessments of the pupil.

(D) Remediation strategies, high school courses, and alternative education options available to the pupil, including, but not limited to, informing the pupil of the option to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12.

(E) Information on postsecondary education and training.

(F) The score of the pupil on the English language arts or mathematics portion of the California Assessment of Student Performance and Progress, established pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33, administered in grade 6, as applicable.

(G) Eligibility requirements, including coursework and test requirements, and the progress of the pupil toward satisfaction of those requirements for admission to four-year institutions of postsecondary education, including the University of California and the California State University.

(H) The availability of financial aid for postsecondary education.

(12) Personal and social counseling, in which pupils receive counseling pertaining to interpersonal relationships for the purpose of promoting the development of their academic abilities, careers and vocations, and personal and social skills.

(f) Professional development related to career and vocational counseling shall include strategies for counseling pupils pursuing postsecondary education, career technical education, multiple pathways, college, and global career opportunities.

(g) Nothing in this section shall be construed as prohibiting persons participating in an organized advisory program approved by the governing board of a school district, and supervised by a school district counselor, from advising pupils pursuant to the organized advisory program.

**SEC. 11.** Section 51413 is added to the Education Code, to read:

**51413.** (a) Notwithstanding any other law, the governing board or body of a local educational agency, and the department on behalf of state special schools, shall grant a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year through the 2014–15 school year and met all applicable graduation requirements other than the passage of the high school exit examination required pursuant to former Section 60851, as that section read on January 1, 2017.

(b) For purposes of this section, "local educational agency" means a school district, county office of education, or charter school.

**SEC. 12.** Section 52052 of the Education Code is amended to read:

**52052.** (a) (1) The Superintendent, with the approval of the state board, shall develop an Academic Performance Index (API), to measure the performance of schools and school districts, especially the academic performance of pupils.

(2) A school or school district shall demonstrate comparable improvement in academic achievement as measured by the API by all numerically significant pupil subgroups at the school or school district, including:

(A) Ethnic subgroups.

(B) Socioeconomically disadvantaged pupils.

(C) English learners.

(D) Pupils with disabilities.

(E) Foster youth.

(F) Homeless youth.

(3) (A) For purposes of this section, a numerically significant pupil subgroup is one that consists of at least 30 pupils, each of whom has a valid test score.

(B) Notwithstanding subparagraph (A), for a subgroup of pupils who are foster youth or homeless youth, a numerically significant pupil subgroup is one that consists of at least 15 pupils.

(C) For a school or school district with an API score that is based on no fewer than 11 and no more than 99 pupils with valid test scores, numerically significant pupil subgroups shall be defined by the Superintendent, with approval by the state board.

(4) (A) The API shall consist of a variety of indicators currently reported to the department, including, but not limited to, the results of the achievement test administered pursuant to Section 60640, attendance rates for pupils in elementary schools, middle schools, and secondary schools, and the graduation rates for pupils in secondary schools.

(B) The Superintendent, with the approval of the state board, may also incorporate into the API the rates at which pupils successfully promote from one grade to the next in middle school and high school, and successfully matriculate from middle school to high school.

(C) Graduation rates for pupils in secondary schools shall be calculated for the API as follows:

(i) Four-year graduation rates shall be calculated by taking the number of pupils who graduated on time for the current school year, which is considered to be three school years after the pupils entered grade 9 for the first time, and dividing that number by the total calculated in clause (ii).

(ii) The number of pupils entering grade 9 for the first time in the school year three school years before the current school year, plus the number of pupils who transferred into the class graduating at the end of the current school year between the school year that was three school years before the current school year and the date of graduation, less the number of pupils who transferred out of the school between the school year that was three school years before the current school year and the date of graduation who were members of the class that is graduating at the end of the current school year.

(iii) Five-year graduation rates shall be calculated by taking the number of pupils who graduated on time for the current school year, which is considered to be four school years after the pupils entered grade 9 for the first time, and dividing that number by the total calculated in clause (iv).

(iv) The number of pupils entering grade 9 for the first time in the school year four years before the current school year, plus the number of pupils who transferred into the class graduating at the end of the current school year between the school year that was four school years before the current school year and the date of graduation, less the number of pupils who transferred out of the school between the school year that was four years before the current school year and the date of graduation who were members of the class that is graduating at the end of the current school year.

(v) Six-year graduation rates shall be calculated by taking the number of pupils who graduated on time for the current school year, which is considered to be five school years after the pupils entered grade 9 for the first time, and dividing that number by the total calculated in clause (vi).

(vi) The number of pupils entering grade 9 for the first time in the school year five years before the current school year, plus the number of pupils who transferred into the class graduating at the end of the current school year between the school year that was five school years before the current school year and the date of graduation, less the number of pupils who transferred out of the school between the school year that was five years before the current school year and the date of graduation who were members of the class that is graduating at the end of the current school year.

(D) The inclusion of five- and six-year graduation rates for pupils in secondary schools shall meet the following requirements:

(i) Schools and school districts shall be granted one-half the credit in their API scores for graduating pupils in five years that they are granted for graduating pupils in four years.

(ii) Schools and school districts shall be granted one-quarter the credit in their API scores for graduating pupils in six years that they are granted for graduating pupils in four years.

(iii) Notwithstanding clauses (i) and (ii), schools and school districts shall be granted full credit in their API scores for graduating in five or six years a pupil with disabilities who graduates in accordance with his or her individualized education program.

(E) The pupil data collected for the API that comes from the achievement test administered pursuant to Section 60640, when fully implemented, shall be disaggregated by special education status, English learners, socioeconomic status, gender, and ethnic group. Only the test scores of pupils who were counted as part of the enrollment in the annual data collection of the California Basic Educational Data System for the current fiscal year and who were continuously enrolled during that year may be included in the test result reports in the API score of the school.

(F) (i) Commencing with the baseline API calculation in 2016, and for each year thereafter, results of the achievement tests specified in subdivision (b) shall constitute no more than 60 percent of the value of the index for secondary schools.

(ii) In addition to the elements required by this paragraph, the Superintendent, with the approval of the state board, may incorporate into the index for secondary schools valid, reliable, and stable measures of pupil preparedness for postsecondary education and career.

(G) Results of the achievement tests specified in subdivision (b) shall constitute at least 60 percent of the value of the index for primary schools and middle schools.

(H) It is the intent of the Legislature that the state's system of public school accountability be more closely aligned with both the public's expectations for public education and the workforce needs of the state's economy. It is therefore necessary that the accountability system evolve beyond its narrow focus on pupil test scores to encompass other valuable information about school performance, including, but not limited to, pupil preparedness for college and career, as well as the high school graduation rates already required by law.

(I) The Superintendent shall annually determine the accuracy of the graduation rate data. Notwithstanding any other law, graduation rates for pupils in dropout recovery high schools shall not be included in the API. For purposes of this subparagraph, "dropout recovery high school" means a high school in which 50 percent or more of its pupils have been designated as dropouts pursuant to the exit/withdrawal codes developed by the department or left a school and were not otherwise enrolled in a school for a period of at least 180 days.

(J) To complement the API, the Superintendent, with the approval of the state board, may develop and implement a program of school quality review that features locally convened panels to visit schools, observe teachers, interview pupils, and examine pupil work, if an appropriation for this purpose is made in the annual Budget Act.

(K) The Superintendent shall annually provide to local educational agencies and the public a transparent and understandable explanation of the individual components of the API and their relative values within the API.

(L) An additional element chosen by the Superintendent and the state board for inclusion in the API pursuant to this paragraph shall not be incorporated into the API until at least one full school year after the state board's decision to include the element into the API.

(b) Pupil scores from the achievement tests provided for in Section 60642.5, when available and when found to be valid and reliable for this purpose, shall be incorporated into the API.

(c) Based on the API, the Superintendent shall develop, and the state board shall adopt, expected annual percentage growth targets for all schools based on their API baseline score from the previous year. Schools are expected to meet these growth targets through effective allocation of available resources. For schools below the statewide API performance target adopted by the state board pursuant to subdivision (d), the minimum annual percentage growth target shall be 5 percent of the difference between the actual API score of a school and the statewide API performance target, or one API point, whichever is greater. Schools at or above the statewide API performance target shall have, as their growth target, maintenance of their API score above the statewide API performance target. However, the state board may set differential growth targets based on grade level of instruction and may set higher growth targets for the lowest performing schools because they have the greatest room for improvement. To meet its growth target, a school shall demonstrate that the annual growth in its API is equal to or more than its schoolwide annual percentage growth target and that all numerically significant pupil subgroups, as defined in subdivision (a), are making comparable improvement.

(d) Upon adoption of state performance standards by the state board, the Superintendent shall recommend, and the state board shall adopt, a statewide API performance target that includes consideration of performance standards and represents the proficiency level required to meet the state performance target.

(e) (1) A school or school district with 11 to 99 pupils with valid test scores shall receive an API score with an asterisk that indicates less statistical certainty than API scores based on 100 or more test scores.

(2) A school or school district annually shall receive an API score, unless the Superintendent determines that an API score would be an invalid measure of the performance of the school or school district for one or more of the following reasons:

(A) Irregularities in testing procedures occurred.

(B) The data used to calculate the API score of the school or school district are not representative of the pupil population at the school or school district.

(C) Significant demographic changes in the pupil population render year-to-year comparisons of pupil performance invalid.

(D) The department discovers or receives information indicating that the integrity of the API score has been compromised.

(E) Insufficient pupil participation in the assessments included in the API.

(F) A transition to new standards-based assessments compromises comparability of results across schools or school districts. The Superintendent may use the authority in this subparagraph in the 2013-14, 2014-15, 2015-16, and 2016-17 school years only, with the approval of the state board.

(3) If a school or school district has fewer than 100 pupils with valid test scores, the calculation of the API or adequate yearly progress pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and federal regulations may be calculated over more than one annual administration of the tests administered pursuant to Section 60640, consistent with regulations adopted by the state board.

(4) Any school or school district that does not receive an API calculated pursuant to subparagraph (F) of paragraph (2) shall not receive an API growth target pursuant to subdivision (c). Schools and school districts that do not have an API calculated pursuant to subparagraph (F) of paragraph (2) shall use one of the following:

- (A) The most recent API calculation.
- (B) An average of the three most recent annual API calculations.
- (C) Alternative measures that show increases in pupil academic achievement for all groups of pupils schoolwide and among significant subgroups.
- (f) Only schools with 100 or more test scores contributing to the API may be included in the API rankings.
- (g) The Superintendent, with the approval of the state board, shall develop an alternative accountability system for schools under the jurisdiction of a county board of education or a county superintendent of schools, community day schools, nonpublic, nonsectarian schools pursuant to Section 56366, and alternative schools serving high-risk pupils, including continuation high schools and opportunity schools. Schools in the alternative accountability system may receive an API score, but shall not be included in the API rankings.
- (h) For purposes of this section, county offices of education shall be considered school districts.
- (i) For purposes of this section, "homeless youth" has the same meaning as in Section 11434a(2) of Title 42 of the United States Code.

**SEC. 13.** Section 52302.8 of the Education Code is amended to read:

**52302.8.** (a) The Legislature hereby finds and declares that vocational training resources that are provided through regional occupational centers and programs are an essential component of the state's secondary school system and the local system of providing occupational skills training to high school pupils. For this reason, the Legislature finds and declares that these resources should be focused primarily on the needs of pupils enrolled in high school.

(b) For the 2008–09 fiscal year, a regional occupational center or program may claim no more than 50 percent of the state-funded average daily attendance for which the center or program is eligible, for services provided to students who are not enrolled in grades 9 to 12, inclusive.

(c) For the 2009–10 fiscal year, a regional occupational center or program may claim no more than 30 percent of the state-funded average daily attendance for which the center or program is eligible, for services provided to students who are not enrolled in grades 9 to 12, inclusive.

(d) For the 2011–12 fiscal year and every fiscal year thereafter, a regional occupational center or program may claim no more than 10 percent of the state-funded average daily attendance for which the center or program is eligible, for services provided to students who are not enrolled in grades 9 to 12, inclusive, and up to an additional 5 percent for CalWORKs, Temporary Assistance Program, or Job Corps participants and participants under the federal Workforce Innovation and Opportunity Act (29 U.S.C. Sec. 3101 et seq.) who are enrolled in Intensive Training services.

(e) Pupils who are CalWORKs, Temporary Assistance Program, or Job Corps participants shall have priority for service within the percentage limits established under subdivision (d).

(f) Notwithstanding subdivision (d), a regional occupational center or program may claim more than 15 percent of its average daily attendance for students who are not enrolled in grades 9 to 12, inclusive, if all of the students who are not enrolled in grades 9 to 12, inclusive, are CalWORKs, Temporary Assistance Program, or Job Corps participants, and if the governing board of the regional occupational center or program does all of the following:

(1) Meets with local human services directors, and representatives of adult education programs, community colleges, and other institutions of higher education, to assess the needs of CalWORKs, Temporary Assistance Program, or Job Corps and federal Workforce Innovation and Opportunity Act participants to identify alternative ways to meet the needs of these adult students.

(2) Enters into a transition plan, approved by the Superintendent, to become in compliance with subdivision (d) in accordance with benchmarks and timelines established in the transition plan. Transition plans shall be established pursuant to guidelines issued by the department, in consultation with the State Department of Social Services, and shall be resubmitted and reviewed annually.

(g) Notwithstanding subdivisions (b), (c), and (d), a regional occupational center or program that claims more than 40 percent of its students are not enrolled in grades 9 to 12, inclusive, on January 1, 2007, shall submit a

letter to the Superintendent by July 1 of each year until it complies with this subdivision, outlining the goals of the regional occupational center or program to reduce the number of adult students in order to comply with subdivision (d) on or before July 1, 2013.

(h) Regional occupational centers and programs operated in a rural county of the sixth, seventh, or eighth class may exceed the number of adults by an additional 10 percent of the limits established in subdivisions (b), (c), and (d).

(i) Adult average daily attendance funding for a regional occupational center or program that has entered into a corrective action plan pursuant to subdivision (k) shall not be redirected to other regional occupational centers or programs to serve additional secondary pupils for up to three years while the regional occupational center or program is in corrective action.

(j) The governing boards of a community college district and a regional occupational center or program may enter into contractual agreements under which the center or program provides services to adult students of the community college district affected by this section if both of the following are satisfied:

(1) The agreements conform to state regulations and audit requirements jointly developed by the Chancellor of the Office of the California Community Colleges and the department, in consultation with, and subject to approval by, the Department of Finance.

(2) A course offered for adults pursuant to an agreement entered into pursuant to this subdivision is limited to the same cost per student to the state as if the course were offered at the regional occupational center or program. This subdivision does not authorize the apportionment of funds for community colleges for adult students in excess of the revenue limit for regional occupational centers or programs if a course is deemed eligible for college credit.

(k) A regional occupational center or program that fails to meet a timeline established under subdivision (c), (d), or (g) shall meet with the community college, adult education program, or other adult service to identify alternative means of meeting the needs of adult students and shall enter into a corrective action plan administered by the department. The corrective action plan shall be established pursuant to guidelines issued by the department and shall be submitted to the department annually for review.

**SEC. 14.** Section 52335.12 of the Education Code is amended to read:

**52335.12.** (a) As a condition of receiving state or federal funds, the regional occupational center or program shall report annually to the department the academic and workforce preparation progress of the secondary pupils enrolled in the center or program. Indicators to measure that progress shall include, but are not limited to, the California Assessment of Student Performance and Progress, established pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33, and other indicators of academic and workforce preparation success, such as reduced dropout rates, workforce preparation, increased matriculation into postsecondary educational institutions, and other measures as determined by the department.

(b) This section shall become effective only when the longitudinal data on pupils enrolled in regional occupational centers and programs can be disaggregated from the California longitudinal pupil achievement data system database, established pursuant to Chapter 10 (commencing with Section 60900) of Part 33.

**SEC. 15.** Section 60605.6 of the Education Code is amended to read:

**60605.6.** Subject to the availability of funds appropriated in the annual Budget Act for this purpose, the Superintendent, upon approval of the state board, shall contract for the development and distribution of separate workbooks for each of grades 2 to 11, inclusive. Each pupil in grades 2 to 11, inclusive, who is required to take the achievement tests described in Section 60642.5 shall receive a copy of the workbook designed for the same grade level in which the pupil is enrolled. These workbooks shall contain material to assist pupils and their parents with standards-based learning, including the grade appropriate academic content standards adopted by the state board pursuant to Section 60605 and sample questions that require knowledge of these standards to answer. The workbooks also shall describe how the sample questions test knowledge of the state board adopted academic content standards.

**SEC. 16.** Chapter 9 (commencing with Section 60850) of Part 33 of Division 4 of Title 2 of the Education Code is repealed.

**SEC. 17.** Section 60900 of the Education Code is amended to read:

**60900.** (a) The department shall contract for the development of proposals that will provide for the retention and analysis of longitudinal pupil achievement data on the tests administered pursuant to Chapter 5 (commencing with Section 60600), Chapter 7 (commencing with Section 60810), and Chapter 9 (commencing with Section 60850). The longitudinal data shall be known as the California Longitudinal Pupil Achievement Data System.

(b) The proposals developed pursuant to subdivision (a) shall evaluate and determine whether it would be most effective, from both a fiscal and a technological perspective, for the state to own the system. The proposals shall additionally evaluate and determine the most effective means of housing the system.

(c) The California Longitudinal Pupil Achievement Data System shall be developed and implemented in accordance with all state rules and regulations governing information technology projects.

(d) The system or systems developed pursuant to this section shall be used to accomplish all of the following goals:

(1) To provide school districts and the department access to data necessary to comply with federal reporting requirements delineated in the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(2) To provide a better means of evaluating educational progress and investments over time.

(3) To provide local educational agencies information that can be used to improve pupil achievement.

(4) To provide an efficient, flexible, and secure means of maintaining longitudinal statewide pupil level data.

(5) To facilitate the ability of the state to publicly report data, as specified in Section 6401(e)(2)(D) of the federal America COMPETES Act (20 U.S.C. Sec. 9871) and as required by the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5).

(6) To ensure that any data access provided to researchers, as required pursuant to the federal Race to the Top regulations and guidelines is provided, only to the extent that the data access is in compliance with the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g).

(e) In order to comply with federal law as delineated in the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), the local educational agency shall retain individual pupil records for each test taker, including all of the following:

(1) All demographic data collected from the California Assessment of Student Performance and Progress (CAASPP) and English language development tests.

(2) Pupil achievement data from assessments administered pursuant to the CAASPP and English language development testing programs. To the extent feasible, data should include subscore data within each content area.

(3) A unique pupil identification number to be identical to the pupil identifier developed pursuant to the California School Information Services, which shall be retained by each local educational agency and used to ensure the accuracy of information on the header sheets of the CAASPP tests and the English language development test.

(4) All data necessary to compile reports required by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), including, but not limited to, dropout and graduation rates.

(5) Other data elements deemed necessary by the Superintendent, with the approval of the state board, to comply with the federal reporting requirements delineated in the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), and the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), after review and comment by the advisory board convened pursuant to subdivision (h). Before the implementation of this paragraph with respect to adding data elements to the California Longitudinal Pupil Achievement Data System for the purpose of complying with the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), the department and the appropriate postsecondary educational agencies shall submit an expenditure plan to the Department of Finance detailing any administrative costs to the department and costs to any local educational agency, if applicable. The Department of Finance shall provide to the Joint Legislative Budget Committee a copy of the expenditure plan within 10 days of receipt of the expenditure plan from the department.

(6) To enable the department, the University of California, the California State University, and the Chancellor of the California Community Colleges to meet the requirements prescribed by the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), these entities shall be authorized to obtain quarterly wage data, commencing July 1, 2010, on students who have attended their respective systems, to assess the impact of education on the employment and earnings of those students, to conduct the annual analysis of district-level and individual district or postsecondary education system performance in achieving priority educational outcomes, and to submit the required reports to the Legislature and the Governor. The information shall be provided to the extent permitted by federal statutes and regulations.

(f) The California Longitudinal Pupil Achievement Data System shall have all of the following characteristics:

(1) The ability to sort by demographic element collected from the CAASPP tests and English language development test.

(2) The capability to be expanded to include pupil achievement data from multiple years.

(3) The capability to monitor pupil achievement on the CAASPP tests and English language development test from year to year and school to school.

(4) The capacity to provide data to the state and local educational agencies upon their request.

(g) Data elements and codes included in the system shall comply with Sections 49061 to 49079, inclusive, and Sections 49602 and 56347, with Sections 430 to 438, inclusive, of Title 5 of the California Code of Regulations, with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), and with the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g), Section 1232h of Title 20 of the United States Code, and related federal regulations.

(h) The department shall convene an advisory board consisting of representatives or designees from the state board, the Department of Finance, the State Privacy Ombudsman, the Legislative Analyst's Office, representatives of parent groups, school districts, and local educational agencies, and education researchers to establish privacy and access protocols, provide general guidance, and make recommendations relative to data elements. The department is encouraged to seek representation broadly reflective of the general public of California.

(i) This section shall be implemented using federal funds received pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), which are appropriated for purposes of this section in Item 6110-113-0890 of Section 2.00 of the Budget Act of 2002 (Chapter 379 of the Statutes of 2002). The release of these funds is contingent on approval of an expenditure plan by the Department of Finance.

(j) For purposes of this chapter, a local educational agency shall include a county office of education, a school district, and a charter school.

**SEC. 18.** Section 99222 of the Education Code is amended to read:

**99222.** The Regents of the University of California are requested to develop jointly with the Trustees of the California State University and the independent colleges and universities, the High School Mathematics Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 5,500 participants who either provide direct instruction in mathematics to California public high school pupils in grades 9 to 12, inclusive, or supervise beginning teachers of high school mathematics.

(b) (1) The institutes shall provide instruction for school teams from each participating school. The school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement test authorized by Section 60640 are at or below the 40th percentile.

- (B) Teams composed of a large percentage of members of their schools' mathematics departments, which may include the chair of that department.
- (C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced-price meals.
- (D) Schools with a high number of beginning and noncredentialed teachers.
- (E) Schools that have adopted standards-based materials approved by the State Board of Education.
- (3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (D) of paragraph (2).
- (c) (1) The institutes shall provide instruction in the teaching of mathematics in a manner consistent with the standard for a comprehensive mathematics instruction program that is research-based and shall include all of the following components:
- (A) Instruction in topics commonly found in high school mathematics courses, including, but not limited to, geometry, algebra II, trigonometry, and calculus, that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant to Section 60640 and to prepare pupils for advanced placement and college coursework.
- (B) Ongoing diagnostic techniques that inform teaching and assessment.
- (C) Early intervention techniques for pupils experiencing difficulty in mathematics.
- (2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.
- (3) Instruction provided pursuant to this section shall acquaint teachers with the value in the diagnostic nature of standardized tests.
- (d) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course and shall be supplemented, during the following school year, with no fewer than 80 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in mathematics.
- (e) It is the intent of the Legislature that a local educational agency or postsecondary educational institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes a High School Mathematics Professional Development Institute if the institute has been certified by the Commission on Teacher Credentialing as meeting mathematics standards.

**SEC. 19.** Section 99223 of the Education Code is amended to read:

**99223.** The Regents of the University of California are requested to jointly develop with the Trustees of the California State University and the independent colleges and universities, the Algebra Academies Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

- (a) In July 2000, the University of California and its institutes' partners shall commence instruction for 1,000 participants who either provide direct instruction in prealgebra and algebra to pupils in grades 7 and 8, or supervise beginning teachers of algebra.
- (b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but are not necessarily limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement test authorized by Section 60640 are at or below the 40th percentile.

(B) Teams composed of a large percentage of members of their schools' mathematics departments, which may include the chair of that department.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced-price meals.

(D) Schools with a high number of beginning and noncredentialed teachers.

(E) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools that meet the criteria described in subparagraph (D) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of prealgebra and algebra in a manner consistent with the standard for a comprehensive mathematics instruction program that is research-based and shall include all of the following components:

(A) Instruction in prealgebra and algebra that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant to Section 60640.

(B) Ongoing diagnostic techniques that inform teaching and assessment.

(C) Early intervention techniques for pupils experiencing difficulty in prealgebra and algebra.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(3) Instruction provided pursuant to this section shall acquaint teachers with the value in the diagnostic nature of standardized tests.

(d) Each participant who satisfactorily completes an institute authorized by this section shall receive a stipend, commensurate with the duration of the institute, of not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000), as determined by the University of California.

(e) In order to provide maximum access, the institutes shall be offered on multiple university and college campuses that are widely distributed throughout the state. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours during the summer or during an intersession break, and shall be supplemented, during the following school year, with no fewer than the equivalent of five additional days of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in prealgebra and algebra.

(f) Teachers attending the institutes authorized by this section shall, as a condition of attendance and subsequent to that attendance, serve as instructors in the program authorized by Chapter 17 (commencing with Section 53081) of Part 28. These teachers shall continue to receive followup professional development during the same time period they are providing instruction. Followup professional development during this time period shall occur outside of instructional time.

(g) It is the intent of the Legislature that a local educational agency or postsecondary educational institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes an Algebra Academies Professional Development Institute program if the institute has been certified by the Commission on Teacher Credentialing as meeting mathematics standards.

**SEC. 20.** Section 99224 of the Education Code is amended to read:

**99224.** The Regents of the University of California are requested to develop jointly with the Trustees of the California State University and the independent colleges and universities, the Algebra Professional Development

Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 5,000 participants who either provide direct instruction in algebra or the coursework in the two years leading to algebra to pupils enrolled in a public school in grades 6 to 12, inclusive, or supervise beginning teachers of algebra.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement examination authorized by Section 60640 are at or below the 40th percentile.

(B) Teams composed of a large percentage of members of their schools' mathematics departments, which may include the chair of that department.

(C) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced-price meals.

(D) Schools with a high number of beginning and noncredentialed teachers.

(E) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (D) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of prealgebra and algebra in a manner consistent with the standard for a comprehensive mathematics instruction program that is research-based, and shall include all of the following components:

(A) Instruction in prealgebra and algebra that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant to Section 60640.

(B) Ongoing diagnostic techniques that inform teaching and assessment.

(C) Intervention techniques for pupils experiencing difficulty in prealgebra and algebra.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(3) Instruction provided pursuant to this section shall acquaint teachers with the value in the diagnostic nature of standardized tests.

(d) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course and shall be supplemented, during the following school year, with no fewer than 80 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in prealgebra and algebra.

(e) It is the intent of the Legislature that a local educational agency or postsecondary educational institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes a High School Algebra Professional Development Institute program if the institute has been certified by the Commission on Teacher Credentialing as meeting mathematics standards.

**SEC. 21.** Section 99225 of the Education Code is amended to read:

**99225.** The Regents of the University of California are requested to develop collaboratively with the Trustees of the California State University, the independent colleges and universities, and the county offices of education, the Elementary Mathematics Professional Development Institutes, to be administered by the university, in partnership with the California State University and with private, independent universities in California, in accordance with all of the following criteria:

(a) In July 2000, the University of California and its institutes' partners shall commence instruction for 5,000 participants who either provide direct instruction in elementary mathematics to pupils in grades 4 to 6, inclusive, or supervise beginning teachers of elementary mathematics.

(b) (1) The institutes shall provide instruction for school teams from each participating school. These school teams may include both beginning and experienced teachers and the schoolsite administrator.

(2) Criteria and priority for selection of participating school teams shall include, but not necessarily be limited to, all of the following:

(A) Schools whose pupils' scores on the mathematics portion of the achievement test authorized by Section 60640 are at or below the 40th percentile.

(B) Schools with high poverty levels, as determined by the percentage of pupils eligible for free or reduced-price meals.

(C) Schools with a high number of beginning and noncredentialed teachers.

(D) Schools that have adopted standards-based materials approved by the State Board of Education.

(3) In any fiscal year, if funding is inadequate to accommodate the participation of all eligible school teams, first priority shall be given to schools meeting the criteria set forth in subparagraph (C) of paragraph (2).

(c) (1) The institutes shall provide instruction in the teaching of elementary mathematics in a manner consistent with the standard for a comprehensive mathematics instruction program that is research-based, and shall include all of the following components:

(A) Instruction in elementary mathematics that will enhance the ability of teachers to prepare pupils for the achievement test authorized pursuant to Section 60640.

(B) Instruction that will prepare teachers as mathematics specialists and to become teacher trainers at their schools, assuming more of the responsibility for mathematics instruction.

(C) Ongoing diagnostic techniques that inform teaching and assessment.

(D) Early and continuing intervention techniques for pupils experiencing difficulty in elementary mathematics.

(2) Instruction provided pursuant to this section shall be consistent with state-adopted academic content standards and with the curriculum frameworks on mathematics for kindergarten and grades 1 to 12, inclusive, that are adopted by the State Board of Education.

(3) Instruction provided pursuant to this section shall acquaint teachers with the value in the diagnostic nature of standardized tests.

(d) In order to provide maximum access, the institutes shall be offered through multiple university and college campuses that are widely distributed throughout the state or in a regionally accredited program offered through instructor-led, interactive online courses. In order to maximize access to teachers and administrators who may be precluded from participating in an onsite institute due to geographical, physical, or time constraints, each institute shall be required to accommodate at least 5 percent of the participants through state-approved instructor-led, interactive online courses. Instruction at the institutes shall consist of an intensive, sustained training period of no less than 40 hours nor more than 120 hours during the summer or during an intersession break or an equivalent instructor-led, online course, and shall be supplemented, during the following school year, with no fewer than 40 additional hours nor more than 120 additional hours of instruction and schoolsite meetings, held on at least a monthly basis, to focus on the academic progress of that school's pupils in elementary mathematics.

(e) It is the intent of the Legislature that a local educational agency or postsecondary educational institution that offers an accredited program of professional preparation consider providing partial and proportional credit toward satisfaction of mathematics course requirements to an enrolled candidate who satisfactorily completes an Algebra Professional Development Institute program if the institute has been certified by the Commission on Teacher Credentialing as meeting mathematics standards.

**SEC. 22.** Section 11126 of the Government Code is amended to read:

**11126.** (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the

price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code.

(12) Prevent the Corrections Standards Authority from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the Superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of Part 33 of Division 4 of Title 2 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the Department of Resources Recycling and Recovery or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(19) Prevent the California Sex Offender Management Board from holding a closed session for the purpose of discussing matters pertaining to the application of a sex offender treatment provider for certification pursuant to Sections 290.09 and 9003 of the Penal Code. Those matters may include review of an applicant's qualifications for certification.

(d) (1) Notwithstanding any other law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent the enforcement advisory committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent the qualifications examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This article does not prevent the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters relating to the development of rates and competitive strategy

for plans offered pursuant to Chapter 15 (commencing with Section 21660) of Part 3 of Division 5 of Title 2.

(i) This article does not prevent the Managed Risk Medical Insurance Board from holding closed sessions when considering matters related to the development of rates and contracting strategy for entities contracting or seeking to contract with the board, entities with which the board is considering a contract, or entities with which the board is considering or enters into any other arrangement under which the board provides, receives, or arranges services or reimbursement, pursuant to Part 6.2 (commencing with Section 12693), Part 6.3 (commencing with Section 12695), Part 6.4 (commencing with Section 12699.50), Part 6.5 (commencing with Section 12700), Part 6.6 (commencing with Section 12739.5), or Part 6.7 (commencing with Section 12739.70) of Division 2 of the Insurance Code.

(j) Nothing in this article shall be construed to prevent the board of the State Compensation Insurance Fund from holding closed sessions in the following:

(1) When considering matters related to claims pursuant to Chapter 1 (commencing with Section 3200) of Division 4 of the Labor Code, to the extent that confidential medical information or other individually identifiable information would be disclosed.

(2) To the extent that matters related to audits and investigations that have not been completed would be disclosed.

(3) To the extent that an internal audit containing proprietary information would be disclosed.

(4) To the extent that the session would address the development of rates, contracting strategy, underwriting, or competitive strategy, pursuant to the powers granted to the board in Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code, when discussion in open session concerning those matters would prejudice the position of the State Compensation Insurance Fund.

(k) The State Compensation Insurance Fund shall comply with the procedures specified in Section 11125.4 of the Government Code with respect to any closed session or meeting authorized by subdivision (j), and in addition shall provide an opportunity for a member of the public to be heard on the issue of the appropriateness of closing the meeting or session.

**SEC. 23.** Section 14530 of the Unemployment Insurance Code is amended to read:

**14530.** To the extent permissible under federal law, the Governor may set aside a portion of the youth funding specifically for programs to improve the academic skills of low-achieving youth and for dropout prevention activities.

**SEC. 24.** Section 6.5 of this bill incorporates amendments to Section 47605 of the Education Code proposed by both this bill and Assembly Bill 1360. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 47605 of the Education Code, and (3) this bill is enacted after Assembly Bill 1360, in which case Section 6 of this bill shall not become operative.

(f) The summative assessment shall be used for both of the following purposes:

(1) To identify the level of English language proficiency of pupils who are limited English proficient.

(2) To assess the progress of limited-English-proficient pupils in acquiring the skills of listening, reading, speaking, and writing in English.

(g)(1) A pupil in any of grades 3 to 12, inclusive, shall not be required to retake those portions of the assessment that measure English language skills for which he or she has previously tested as advanced within each appropriate grade span, as determined by the department in accordance with paragraph (8) of subdivision (e).

(2) Notwithstanding paragraph (1), a pupil in any of grades 10 to 12, inclusive, shall not be required to retake those portions of the assessment that measure English language skills for which he or she has previously tested as early advanced or advanced.

(3) This subdivision shall not be implemented unless and until the department receives written documentation from the United States Department of Education that implementation is permitted by federal law.

(4) The Superintendent shall not administer an assessment for initial identification or a summative assessment pursuant to this section until both assessments are developed and adopted by the state board.

(5) The Superintendent shall report to the appropriate policy committees of the Legislature when the assessments are ready for their initial administration. (Added by Stats.2013, c. 478 (S.B.201), 1/4)

**60605.11. Standards for English language development**

The state board shall approve standards for English language development for pupils whose primary language is a language other than English. The standards shall be comparable in rigor and specificity to the standards for English language arts adopted pursuant to Section 60605.8, the standards for mathematics adopted pursuant to Sections 60605.8 and 60605.11, and the standards for science adopted pursuant to Section 60605.85. (Added by Stats.1997, c. 748 (A.B.748), § 1. Amended by Stats.1999, c. 78 (A.B.1115), § 52, July 7, 1999; Stats.2011, c. 605 (A.B.124), § 1; Stats.2013, c. 709 (S.B.709), § 1)

**60605.12. Placement of results on Internet for public access**

Commencing the school year following the year in which the Superintendent of Public Instruction has developed or identified a test pursuant to this chapter, the State Department of Education shall place the results of the statewide test, including average scores for each school district, on its Internet site for public access. (Added by Stats.1999, c. 678 (S.B.638), § 2.)

**CHAPTER 8. COLLEGE PREPARATION PARTNERSHIP PROGRAMS [REPEALED]**

**CHAPTER 9. HIGH SCHOOL EXIT EXAMINATION**

High school exit examination; development; High School Exit Examination Standards Panel; field testing; standards for examination; definitions. Successful completion of test as requirement for graduation; effective date of requirement; waiver; time for taking examination; results; supplemental instruction. Pupils completing grade 12 in 2015; exemption from examination requirement.

- Section**
- 60851.5. Suspension of administration and passing high school exit examination requirement.
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  - 60856. Other criteria for evaluating students.
  - 60857. Contract for independent study of passage of high school exit examination as condition of receiving diploma and of graduation from high school; persons or entities to receive report; approval for scope of work and final contract by State Board of Education.
  - 60859. Delay of date upon which each pupil completing grade 12 is required to pass high school exit examination as condition of receiving diploma or graduation from high school.

**§ 60850. High school exit examination; development; High School Exit Examination Standards Panel; field testing; standards for examination; definitions**

(a) The Superintendent of Public Instruction, with the approval of the State Board of Education, shall develop a high school exit examination in English language arts and mathematics in accordance with the statewide academically rigorous content standards adopted by the State Board of Education pursuant to Section 60605. To facilitate the development of the examination, the superintendent shall review any existing high school subject matter examinations that are linked to, or can be aligned with, the statewide academically rigorous content standards for English language arts and mathematics adopted by the State Board of Education. By October 1, 2000, the State Board of Education shall adopt a high school exit examination that is aligned with statewide academically rigorous content standards.

(b) The Superintendent of Public Instruction, with the approval of the State Board of Education, shall establish a High School Exit Examination Standards Panel to assist in the design and composition of the exit examination and to ensure that the examination is aligned with statewide academically rigorous content standards. Members of the panel shall include, but are not limited to, teachers, administrators, school board members, parents, and the general public. Members of the panel shall serve without compensation for a term of two years and shall be representative of the state's ethnic and cultural diversity and gender balance. The superintendent shall also make the best effort to ensure representation of the state's diversity relative to urban, suburban, and rural areas. The State Department of Education shall provide staff to the panel.

(c) The Superintendent of Public Instruction shall require that the examination be field tested before actual implementation to ensure that the examination is free from bias and that its content is valid and reliable.

(d) Before the State Board of Education adopts the exit examination, the Superintendent of Public Instruction shall submit the examination to the Statewide Pupil Assessment Review Panel established pursuant to Section 60606. The panel shall review all items or questions to ensure that the content of the examination complies with the requirements of Section 60614.

(e) The exit examination prescribed in subdivision (a) shall conform to the following standards or it shall not be required as a condition of graduation:

(1) The examination may not be administered to a pupil who did not receive adequate notice as provided for in paragraph (1) of subdivision (f) regarding the test.

(2) The examination, regardless of federal financial participation, shall comply with Title VI of the Civil Rights Act (42 U.S.C. Sec. 2000d et seq.), its implementing regulations (34 C.F.R. Part 100), and the Equal Educational Opportunities Act of 1974 (20 U.S.C. Sec. 1701).

(3) The examination shall have instructional and curricular validity.

(4) The examination shall be scored as a criterion referenced examination.

(f) For purposes of this section, the following terms have the following meanings:

(1) "Accommodations" means any variation in the assessment environment or process that does not fundamentally alter what the test measures or affect the comparability of scores. "Accommodations" may include variations in scheduling, setting, aids, equipment, and presentation format.

(2) "Adequate notice" means that the pupil and his or her parent or guardian have received written notice, at the commencement of the pupil's 9th grade, and each year thereafter through the annual notification process established pursuant to Section 48980, or if a transfer pupil, at the time the pupil transfers. A pupil who has taken the exit examination in the 10th grade is deemed to have had "adequate notice" as defined in this paragraph.

(3) "Curricular validity" means that the examination tests for content found in the instructional textbooks. For the purposes of this section, any textbook or other instructional material adopted pursuant to this code and consistent with the state's adopted curriculum frameworks shall be deemed to satisfy this definition.

(4) "Instructional validity" means that the examination is consistent with what is expected to be taught. For the purposes of this section, instruction that is consistent with the state's adopted curriculum frameworks for the subjects tested shall be deemed to satisfy this definition.

(5) "Modification" means any variation in the assessment environment or process that fundamentally alters what the test measures or affects the comparability of scores.

(g) The examination shall be offered to individuals with exceptional needs, as defined in Section 56026, in accordance with paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code and Section 794 and following of Title 29 of the United States Code. Individuals with exceptional needs shall be administered the examination with appropriate accommodations, where necessary.

(h) Nothing in this chapter shall prohibit a school district from requiring pupils to pass additional exit examinations approved by the governing board of the school district as a condition for graduation. *(Added by Stats.1999-2000, 1st Ex.Sess., c. 1 (S.B.2), § 5, eff. June 25, 1999. Amended by Stats.2002, c. 808 (S.B.1476), § 1.)*

**§ 60851. Successful completion of test as requirement for graduation; effective date of requirement; waiver; time for taking examination; results; supplemental instruction**

(a) Commencing with the 2003-04 school year and each school year thereafter, each pupil completing grade 12 shall successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school. Funding for the administration of the high school exit examination shall be provided for in the annual Budget Act. The Superintendent shall apportion funds appropriated for this purpose to enable school districts to meet the requirements of this subdivision and subdivisions (b), (c), and (d). The state board shall establish the amount of funding to be apportioned per test administered, based on a review of the cost per test.

(b) Each pupil shall take the high school exit examination in grade 10 beginning in the 2001-02 school year and may take the examination during each subsequent administration, until each section of the examination has been passed.

(c)(1) At the parent or guardian's request, a school principal shall submit a request for a waiver of the requirement to successfully pass the high school exit examination to the governing board of the school district for a pupil with a disability who has taken the high school exit examination with modifications that alter what the test measures and has received the equivalent of a passing score on one or both subject matter parts of the high school exit examination. A governing board of a school district may waive the requirement to successfully pass one or both subject matter parts of the high school exit examination for a pupil with a disability if the principal certifies to the governing board of the school district that the pupil has all of the following:

(A) An individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)) in place that requires the accommodations or modifications to be provided to the pupil when taking the high school exit examination.

(B) Sufficient high school level coursework either satisfactorily completed or in progress in a high school level curriculum sufficient to have attained the skills and knowledge otherwise needed to pass the high school exit examination.

(C) An individual score report for the pupil showing that the pupil has received the equivalent of a passing score on the high school exit examination while using a modification that fundamentally alters what the high school exit examination measures as determined by the state board.

(2) A school district shall report to the state board, in a manner and by a date determined by the Superintendent, the number and characteristics of waivers reviewed, granted, and denied under this subdivision and any additional information determined to be in furtherance of this subdivision.

(d) The high school exit examination shall be offered in each public school and state special school that provides instruction in grades 10, 11, or 12, on the dates designated by the Superintendent. A high school exit examination may not be administered on any date other than those designated by the Superintendent as examination days or makeup days.

(e) The results of the high school exit examination shall be provided to each pupil taking the examination within eight weeks of the examination administration and in time for the pupil to take any section of the examination not passed at the next administration. A pupil shall take again only those parts of the high school exit examination he or she has not previously passed and may not retake any portion of the high school exit examination that he or she has previously passed.

(f) Supplemental instruction shall be provided to any pupil who does not demonstrate sufficient progress toward passing the high

school exit examination. To the extent that school districts have aligned their curriculum with the state academic content standards adopted by the state board, the curriculum for supplemental instruction shall reflect those standards and shall be designed to assist the pupils to succeed on the high school exit examination. This chapter does not require the provision of supplemental services using resources that are not regularly available to a school or school district, including summer school instruction. In no event shall any action taken as a result of this subdivision cause or require reimbursement by the Commission on State Mandates. Sufficient progress shall be determined on the basis of either of the following:

(1) The results of the assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 and the minimum levels of proficiency recommended by the state board pursuant to Section 60648.

(2) The grades of the pupil and other indicators of academic achievement designated by the school district. (Added by Stats.1999–2000 1st Ex.Sess., c. 1 (S.B.2), § 5, eff. June 25, 1999. Amended by Stats.2001, c. 716 (A.B.1609), § 1; Stats.2002, c. 808 (S.B.1476), § 2; Stats.2006, c. 3 (S.B.517), § 1, eff. Jan. 30, 2006; Stats.2014, c. 923 (S.B.971), § 62, eff. Jan. 1, 2015.)

**§ 60851.1. Pupils completing grade 12 in 2015; exemption from examination requirement**

Notwithstanding any other law, the high school exit examination shall not be required as a condition of receiving a diploma of graduation or a condition of graduation from high school for a pupil completing grade 12 in 2015 and who has met all other high school graduation requirements. (Added by Stats.2015, c. 225 (S.B.725), § 1, eff. Aug. 26, 2015.)

**§ 60851.5. Suspension of administration and passing high school exit examination requirement**

Notwithstanding Section 60851, the administration of the high school exit examination, and the requirement that each pupil completing grade 12 successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school, shall be suspended for the 2015–16, 2016–17, and 2017–18 school years. (Added by Stats.2015, c. 572 (S.B.172), § 2, eff. Jan. 1, 2016.)

**§ 60851.6. Grant of diploma; conditions**

(a) Notwithstanding Section 60851 or any other law, the governing board or body of a local educational agency, and the department on behalf of state special schools, shall grant a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination.

(b) For purposes of this section, “local educational agency” means a school district, county office of education, or charter school.

(c) This section shall remain in effect only until July 31, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before July 31, 2018, deletes or extends that date. (Added by Stats.2015, c. 572 (S.B.172), § 3, eff. Jan. 1, 2016.)

**Repeal**

For repeal of this section, see its terms.

**§ 60852. Deferment of examination requirement for certain students**

Notwithstanding Section 60851, if a school district determines that a pupil does not possess sufficient English language skills to be assessed pursuant to Section 60850, the district may defer the requirement that the pupil pass the high school exit examination for a period of up to 24 calendar months of enrollment in the California

public school system until the pupil has completed six months of instruction in reading, writing, and comprehension in the English language. Nothing in this section shall be construed to allow any pupil to receive a diploma of graduation from high school without passing the exit examination, in English, prescribed by Section 60850. (Added by Stats.1999–2000, 1st Ex.Sess., c. 1 (S.B.2), § 5, eff. June 25, 1999.)

**§ 60852.1. Panel to recommend alternative means to demonstrate academic achievements; appointment; composition; findings and recommendations; timing**

(a) The Superintendent shall recommend, and the state board shall select, members of a panel that shall convene to make recommendations regarding alternative means for eligible pupils with disabilities to demonstrate that they have achieved the same level of academic achievement in the content standards in English language arts or mathematics, or both, required for passage of the high school exit examination.

(1) The panel shall be composed of educators and other individuals who have experience with the population of pupils with disabilities eligible for alternative means of demonstrating academic achievement, as defined in Section 60852.2, and educators and other individuals who have expertise with multiple forms of assessment. The panel shall consult with experts in other states that offer alternative means for pupils with disabilities to demonstrate academic achievement. A majority of the panel shall be classroom teachers.

(2) The panel shall make findings and recommendations regarding all of the following:

(A) Specific options for alternative assessments, submission of evidence, or other alternative means by which eligible pupils with disabilities may demonstrate that they have achieved the same level of academic achievement in the content standards in English language arts or mathematics, or both, required for passage of the high school exit examination.

(B) Scoring or other evaluation systems designed to ensure that the eligible pupil with a disability has achieved the same competence in the content standards required for passage of the high school exit examination.

(C) Processes to ensure that the form, content, and scoring of assessments, evidence, or other means of demonstrating academic achievement are applied uniformly across the state.

(D) Estimates of one-time or ongoing costs, and whether each option should be implemented on a statewide or regional basis, or both.

(3) The panel shall present its options and make its findings and recommendations to the Superintendent and to the state board by October 1, 2009.

(b) For those portions of, or those academic content standards assessed by, the high school exit examination for which the state board determines it is feasible to create alternative means by which eligible pupils with disabilities may demonstrate the same level of academic achievement required for passage of the high school exit examination, the state board, taking into consideration the findings and recommendations of the panel, shall adopt regulations for alternative means by which eligible pupils with disabilities, as defined in Section 60852.2, may demonstrate that they have achieved the same level of academic achievement in the content standards required for passage of the high school exit examination. The regulations shall include appropriate timelines and the manner in which eligible pupils with disabilities and school districts shall be timely notified of the results. (Added by Stats.2008, c. 666 (A.B.2040), § 1. Amended by Stats.2012, c. 192 (A.B.1705), § 1; Stats.2013, c. 76 (A.B.383), § 49.)

§ 60852.2. "Eligible pupil with a disability" defined; participation in alternate means of demonstrating academic achievement

(a) For purposes of this chapter, "eligible pupil with a disability" means a pupil who meets all of the following criteria:

(1) The pupil has an operative individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)) that indicates that the pupil has an anticipated graduation date and is scheduled to receive a high school diploma by that date.

(2) The pupil has not passed the high school exit examination.

(3) The school district or state special school certifies that the pupil has satisfied or will satisfy all other state and local requirements for the receipt of a high school diploma by his or her anticipated graduation date.

(4) The pupil has attempted to pass those sections not yet passed of the high school exit examination at least twice after grade 10, including at least once during the current enrollment of the pupil in grade 12, with the accommodations or modifications, if any, specified in the individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) or the plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)) of the pupil.

(b) Upon the state board's determination pursuant to subdivision (b) of Section 60852.3 that the alternative means have been implemented, an eligible pupil with a disability may participate in the alternative means of demonstrating the level of academic achievement in the content standards required for passage of the high school exit examination in the manner prescribed by the regulations adopted pursuant to Section 60852.1.

(c) An eligible pupil with a disability shall be deemed to have satisfied the requirements of Section 60851 for those parts of the high school exit examination that the eligible pupil with a disability has not passed if the school district in which the eligible pupil with a disability is enrolled is notified that the eligible pupil with a disability has successfully demonstrated the same level of academic achievement in the statewide content standards as the level of academic achievement that is necessary to pass the high school exit examination through one or more of the alternative means prescribed in the regulations adopted pursuant to Section 60852.1. (*Added by Stats.2008, c. 666 (A.B.2040), § 2. Amended by Stats.2012, c. 192 (A.B.1705), § 2; Stats.2014, c. 479 (S.B.267), § 1, eff. Jan. 1, 2015.*)

§ 60852.3. Eligible pupils with disabilities not required to pass examination as a condition of graduation

(a) Notwithstanding any other provision of law, commencing with the 2009-10 school year, an eligible pupil with a disability is not required to pass the high school exit examination established pursuant to Section 60850 as a condition of receiving a diploma of graduation or as a condition of graduation from high school.

(b) This exemption shall last until the state board, pursuant to Section 60852.1, makes a determination that the alternative means by which an eligible pupil with disabilities may demonstrate the same level of academic achievement in the portions of, or those content standards required for passage of, the high school exit examination are not feasible or that the alternative means are implemented.

(c) For the purposes of this section, an eligible pupil with a disability is a pupil with an individualized education program adopted pursuant to the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) or a plan adopted pursuant to Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)) that indicates the pupil is scheduled to receive a high school diploma, and that the pupil has satisfied or will satisfy all other state and local

requirements for the receipt of a high school diploma, on or after July 1, 2009.

(d) A local educational agency, as defined in Section 56026.3, shall not adopt an individualized education program pursuant to the federal Individuals with Disabilities Education Act or a plan pursuant to Section 504 of the federal Rehabilitation Act of 1973 for a pupil for the sole purpose of exempting the pupil from the requirement to pass the high school exit examination as a condition of receiving a high school diploma, unless that adoption is consistent with federal law.

(e) Pursuant to subdivision (b) of Section 60851, pupils with exceptional needs shall take the high school exit examination in grade 10 for purposes of fulfilling the requirements of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 7114). (*Added by Stats.2009-2010, 4th Ex.Sess., c. 2 (A.B.2), § 30, eff. July 28, 2009. Amended by Stats.2010, c. 328 (S.B.1330), § 49.*)

§ 60852.5. Alternatives to high school exit exams for disabled students; independent consultant to assess options; selection of consultant; preparation and function of report; preliminary findings; funds

(a) By January 31, 2004, the Superintendent of Public Instruction shall develop, and the State Board of Education shall approve, a request for a proposal for an independent consultant to assess options and provide recommendations for alternatives to the high school exit examination for pupils with disabilities to be eligible for a high school diploma. By April 30, 2004, an independent consultant shall be selected by a selection panel consisting of one representative appointed by each of the following persons and entities:

- (1) The President pro Tempore of the Senate.
- (2) The Speaker of the Assembly.
- (3) The Legislative Analyst's Office.
- (4) The State Department of Education.
- (5) The Department of Finance.

(b) The independent consultant should possess expertise on the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.) and applicable state law, as well as assessment methodologies concerning pupils with disabilities.

(c) The independent consultant shall, in consultation with the advisory panel established pursuant to Section 60852.6, prepare a report that does all of the following:

(1) Recommends options for graduation requirements and assessments for pupils who are individuals with exceptional needs, as defined in Section 56026, or who are disabled, as defined in Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794).

(2) Identifies those provisions of state and federal law and regulation that are relevant to graduation requirements and assessments for pupils who are individuals with exceptional needs.

(3) Recommends the steps that would be taken to bring California into full compliance with the state and federal law and regulations that are identified pursuant to paragraph (2).

(d) The independent consultant shall provide the advisory panel established pursuant to Section 60852.6 with a preliminary report of findings and shall include the advisory panel's concerns and recommendations in a final report. The final report shall be disseminated to the members of the advisory panel, the Legislature, the Legislative Analyst's Office, the Department of Finance, the State Department of Education, and interested parties no later than May 1, 2005.

(e) The Superintendent of Public Instruction may, upon approval of an expenditure plan by the Department of Finance and the Joint Legislative Budget Committee, provide funds for the purposes of implementing the recommendations provided pursuant to subdivision (c). (*Added by Stats.2003, c. 803 (S.B.964), § 1.*)

**§ 60852.6. High School Exit Examination for Pupils With Disabilities Advisory Panel; members of panel; terms**

(a) The Superintendent of Public Instruction shall establish, by April 30, 2004, a 15-member High School Exit Examination for Pupils With Disabilities Advisory Panel to advise the independent consultant selected pursuant to Section 60852.5. The members of the advisory panel shall be composed of the following individuals:

- (1) Three parents or guardians of pupils with disabilities.
- (2) An individual with disabilities.
- (3) Three credentialed teachers who work with pupils with disabilities.
- (4) Two representatives of institutions of higher education that prepare special education and related services personnel.
- (5) A director of a special education local planning area.
- (6) Two school administrators whose duties relate to the provision of services to pupils with disabilities.
- (7) A representative from the State Department of Education.
- (8) A representative of a vocational, community, or business organization concerned with the provision of transition services to pupils with disabilities.
- (9) A representative of community-based organizations providing special education and related services.

(b) The members of the advisory panel shall serve without compensation for a term of one year and shall be representative of the state's ethnic and cultural diversity and gender balance. The Superintendent of Public Instruction shall also make every effort to ensure that the panel is representative of the state's diversity relative to urban, suburban, and rural areas. The State Department of Education shall provide staff and resources to the advisory panel. (Added by Stats.2003, c. 803 (S.B.964), § 2.)

**§ 60853. Preparation of students for examination**

(a) In order to prepare pupils to succeed on the exit examination, a school district shall use regularly available resources and any available supplemental remedial resources, including, but not limited to, funds available for programs established by Chapter 320 of the Statutes of 1998, Chapter 811 of the Statutes of 1997, Chapter 743 of the Statutes of 1998, and funds available for other similar supplemental remedial programs.

(b) It is the intent of the Legislature that a school district consider restructuring its academic offerings reducing the electives available to any pupil who has not demonstrated the skills necessary to succeed on the exit examination, so that the pupil can be provided supplemental instruction during the regularly scheduled academic year.

(c) A school district should prepare pupils to succeed on the exit examination. In preparing pupils to succeed, school districts are encouraged to use existing resources to ensure that all pupils succeed. The state has created programs such as the Class Size Reduction Program, staff development programs, after school programs, and others, in addition to providing general purpose funding, in order to assist school districts in providing an education that will help all pupils succeed. (Added by Stats.1999-2000, 1st Ex.Sess., c. 1 (S.B.2), § 5, eff. June 25, 1999.)

**§ 60855. Multiyear independent evaluation of high school exit examination; consideration of test results; recommendations; report**

(a) By January 15, 2000, the Superintendent shall contract for a multiyear independent evaluation of the high school exit examination that is established pursuant to this chapter. The evaluation shall be based upon information gathered in field testing and annual administrations of the examination and shall include all of the following:

(1) Analysis of pupil performance, broken down by grade level, gender, race or ethnicity, and subject matter of the examination, including trends that become apparent over time.

(2) Analysis of the exit examination's effects, if any, on college attendance, pupil retention, graduation, and dropout rates, including analysis of these effects on the population subgroups described in subdivision (b).

(3) Analysis of whether the exit examination is likely to have, or has, differential effects, whether beneficial or detrimental, on population subgroups described in subdivision (b).

(b) Evaluations conducted pursuant to this section shall separately consider test results for each of the following population subgroups, provided that information concerning individuals shall not be gathered or disclosed in the process of preparing this evaluation.

- (1) English language learners and non-English language learners.
- (2) Individuals with exceptional needs and individuals without exceptional needs.

(3) Pupils who qualify for free or reduced price meals and are enrolled in schools that qualify for assistance under Title 1 of the federal Improving America's Schools Act of 1994 (Public Law 103-382) and pupils that do not qualify for free or reduced price meals and are not enrolled in schools that qualify for assistance under Title 1 of the federal Improving America's Schools Act of 1994 (Public Law 103-382).

(4) Any group of pupils that has been determined by the independent evaluator to be differentially affected by the exit examination established pursuant to this chapter.

(c) Evaluation reports shall include recommendations to improve the quality, fairness, validity, and reliability of the examination. The independent evaluator also may make recommendations for revisions in design, administration, scoring, processing, or use of the examination.

(d) The independent evaluator shall report to the Governor, the Office of the Legislative Analyst, the Superintendent, the state board, and the chairs of the education policy committees in both houses of the Legislature, in accordance with the following schedule:

- (1) Preliminary report on field testing by July 1, 2000.
- (2) First annual report by February 1, 2002.
- (3) Regular biennial reports by February 1 of even-numbered years following 2002. (Added by Stats.1999-2000, 1st Ex.Sess., c. 1 (S.B.2), § 5, eff. June 25, 1999. Amended by Stats.2000, c. 135 (A.B.2539), § 52; Stats.2011, c. 347 (S.B.942), § 37.)

**§ 60856. Other criteria for evaluating students**

After adoption and the initial administrations of the high school exit examination the State Board of Education, in consultation with the Superintendent of Public Instruction, shall study the appropriateness of other criteria by which high school pupils who are regarded as highly proficient but unable to pass the high school exit examination may demonstrate their competency and receive a high school diploma. This criteria shall include, but is not limited to, an exemplary academic record as evidenced by transcripts and alternative tests of equal rigor in the academic areas covered by the high school exit examination. If the State Board of Education determines that other criteria are appropriate and do not undermine the intent of this chapter that all high school graduates demonstrate satisfactory academic proficiency, the board shall forward its recommendations to the Legislature for enactment. (Added by Stats.1999-2000, 1st Ex.Sess., c. 1 (S.B.2), § 5, eff. June 25, 1999.)

**§ 60857. Contract for independent study of passage of high school exit examination as condition of receiving diploma and of graduation from high school; persons or entities to receive report; approval for scope of work and final contract by State Board of Education**

(a) The State Department of Education, with the approval of the State Board of Education, shall contract for an independent study regarding the requirement of passage of the high school exit examination as a condition of receiving a diploma of graduation and a condition of graduation from high school. A final report based on the study shall be delivered to the Governor, the chairs of the education policy committees in the Legislature, the State Board of Education, and the Superintendent of Public Instruction, on or before May 1, 2003.

(b) The scope of work and the final contract for the independent study required pursuant to this section shall be approved by the State Board of Education. The study shall include, but not be limited to, examination of whether the test development process and the implementation of standards-based instruction meet the required standards for a test of this nature.

(c) Funding for the independent study required by this section shall be provided for in the annual Budget Act. (*Added by Stats.2001, c. 716 (A.B.1609), § 2.*)

**§ 60859. Delay of date upon which each pupil completing grade 12 is required to pass high school exit examination as condition of receiving diploma or graduation from high school**

(a) Notwithstanding any provision of law to the contrary, on or before August 1, 2003, the State Board of Education may delay the date upon which each pupil completing grade 12 is required to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school to a date other than the 2003-04 school year if, in reviewing the report of the independent study, the State Board of Education determines that the test development process or the implementation of standards-based instruction does not meet the required standards for a test of this nature.

(b) After August 1, 2003, the State Board of Education may not delay the date upon which each pupil completing grade 12 is required to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school. (*Added by Stats.2001, c. 716 (A.B.1609), § 3.*)

**CHAPTER 10. CALIFORNIA LONGITUDINAL PUPIL ACHIEVEMENT DATA SYSTEM**

**Section**

- 60900. Development and implementation of system; goals; characteristics.
- 60901. Preparation of system to include data on quarterly rate of pupil attendance; reports; chronic absentee defined; early warning systems; voluntary submission of data; funding.

**§ 60900. Development and implementation of system; goals; characteristics**

(a) The department shall contract for the development of proposals that will provide for the retention and analysis of longitudinal pupil achievement data on the tests administered pursuant to Chapter 5 (commencing with Section 60600), Chapter 7 (commencing with Section 60810), and Chapter 9 (commencing with Section 60850). The longitudinal data shall be known as the California Longitudinal Pupil Achievement Data System.

(b) The proposals developed pursuant to subdivision (a) shall evaluate and determine whether it would be most effective, from both a fiscal and a technological perspective, for the state to own the

system. The proposals shall additionally evaluate and determine the most effective means of housing the system.

(c) The California Longitudinal Pupil Achievement Data System shall be developed and implemented in accordance with all state rules and regulations governing information technology projects.

(d) The system or systems developed pursuant to this section shall be used to accomplish all of the following goals:

(1) To provide school districts and the department access to data necessary to comply with federal reporting requirements delineated in the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.).

(2) To provide a better means of evaluating educational progress and investments over time.

(3) To provide local educational agencies information that can be used to improve pupil achievement.

(4) To provide an efficient, flexible, and secure means of maintaining longitudinal statewide pupil level data.

(5) To facilitate the ability of the state to publicly report data, as specified in Section 6401(e)(2)(D) of the federal America COMPETES Act (20 U.S.C. Sec. 9871) and as required by the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5).<sup>1</sup>

(6) To ensure that any data access provided to researchers, as required pursuant to the federal Race to the Top regulations and guidelines is provided, only to the extent that the data access is in compliance with the federal Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g).

(e) In order to comply with federal law as delineated in the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), the local educational agency shall retain individual pupil records for each test taker, including all of the following:

(1) All demographic data collected from the California Assessment of Student Performance and Progress (CAASPP), high school exit examination, and English language development tests.

(2) Pupil achievement data from assessments administered pursuant to the CAASPP, high school exit examination, and English language development testing programs. To the extent feasible, data should include subscore data within each content area.

(3) A unique pupil identification number to be identical to the pupil identifier developed pursuant to the California School Information Services, which shall be retained by each local educational agency and used to ensure the accuracy of information on the header sheets of the CAASPP tests, high school exit examination, and the English language development test.

(4) All data necessary to compile reports required by the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), including, but not limited to, dropout and graduation rates.

(5) Other data elements deemed necessary by the Superintendent, with the approval of the state board, to comply with the federal reporting requirements delineated in the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), and the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), after review and comment by the advisory board convened pursuant to subdivision (h). Before the implementation of this paragraph with respect to adding data elements to the California Longitudinal Pupil Achievement Data System for the purpose of complying with the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), the department and the appropriate postsecondary educational agencies shall submit an expenditure plan to the Department of Finance detailing any administrative costs to the department and costs to any local educational agency, if applicable. The Department of Finance shall provide to the Joint Legislative Budget Committee a copy of the expenditure plan within 10 days of receipt of the expenditure plan from the department.

**DECLARATION OF SERVICE BY EMAIL**

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.

On August 9, 2018, I served the:

- **Notice of Complete Mandate Redetermination Request, Schedule for Comments, and Notice of Tentative Hearing Date issued August 9, 2018**
- **Mandate Redetermination Request filed by the Department of Finance on June 28, 2018**

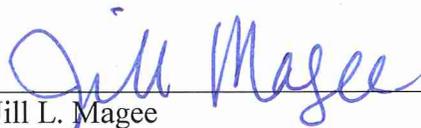
Mandate Redetermination Request, 17-MR-01

*High School Exit Examination (00-TC-06)*

Education Code Sections 60850, 60851, 60853, and 60855; Statutes 1999x, Chapter 1 and Statutes 1999, Chapter 132; California Code of Regulations, Title 5, Sections 1200-1225 (regulations effective July 20, 2001 [Register 01, No. 25] and regulations effective May 1, 2003 [Register 03, No. 18]); as alleged to be modified by Statutes 2015, Chapter 572 (SB 172); and Statutes 2017, Chapter 641 (AB 830)  
Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 9, 2018 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
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Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 8/1/18

**Claim Number:** 17-MR-01

**Matter:** High School Exit Examination (00-TC-06)

**Requester:** Department of Finance

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Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 60850, 60851, 60853, 60855;  
Statutes 1999x, Chapter 1; Statutes 1999, Chapter 13 5;  
California Code of Regulations, Title 5, Sections 1200 - 1225 in effect March 2003.  
Filed on January 25, 2004,  
By Trinity Union High School District,  
Claimant

No. 00-TC-06

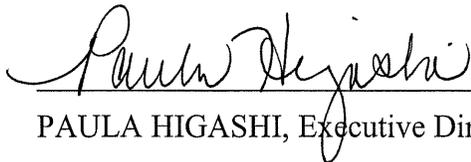
*High School Exit Examination*

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 March 25, 2004)*

**STATEMENT OF DECISION**

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

  
\_\_\_\_\_  
PAULA HIGASHI, Executive Director

3-26-04  
Date

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 60850, 6085 1, 60853, 60855;  
Statutes 1999x, Chapter 1; Statutes 1999, Chapter 13 5;  
California Code of Regulations, Title 5, Sections 1200 – 1225 in effect March 2003.  
Filed on January 25, 2001,  
By Trinity Union High School District,  
Claimant

No. 00-TC-06

*High School Exit Examination*

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 March 25, 2004)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on March 25, 2004. David Scribner appeared on behalf of claimant, Trinity Union High School District. Michael Wilkening and Lenin Del Castillo appeared on behalf of the Department of Finance (DOF). Juan Sanchez appeared on behalf of the California Department of Education. Paul Warren appeared on behalf of the Legislative Analyst’s Office.

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 at the hearing by a vote of 5-0.

**BACKGROUND**

A. Test Claim Legislation

The test claim legislation that established the high school exit exam (HSEE) was sponsored by Governor Davis in 1999, and enacted during an extraordinary session of the Legislature dedicated to education reform issues. The purpose of the HSEE is to “significantly improve pupil achievement in public high schools and to ensure that students who graduate from public high schools can demonstrate grade-level competency

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<sup>1</sup> Although part of Statutes 1999x, chapter 1, claimant did not plead Education Code section 60852. Therefore, the Commission makes no findings on Education Code section 60852.

in the state content standards for writing, reading and mathematics.”<sup>2</sup> The HSEE tests “eligible pupils”<sup>3</sup> on mathematics through Algebra I, and English/Language arts.<sup>4</sup>

The test claim legislation<sup>5</sup> originally required high school students, beginning in the 2003-2004 school year, to pass the HSEE as a condition of receiving a diploma or graduating from high school! Statutes 2001, chapter 716 (Assem. Bill No. 1609) authorizes the State Board of Education (SBE) to delay the date upon which passing the HSEE is required for graduation. The SBE has postponed the HSEE requirement for graduation until the class of 2006, and has shortened the length of the HSEE from three to two days.<sup>7</sup>

The HSEE is administered by the “test administrator,” defined as,

a certificated employee of a school district who has received training in the administration of the [HSEE] from the high school exit examination district or test site coordinator.\*

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<sup>2</sup> < <http://www.cde.ca.gov/statetests/cahsee/background/info.html> >  
[as of February 2, 2004].

<sup>3</sup> An eligible pupil is “one who is enrolled in a California public school in any of grades 10, 11, or 12 who has not passed either the English/language arts section or the mathematics section of the [HSEE].” (Cal. Code Regs, tit. 5, § 1200, subd. (e)).

<sup>4</sup> <http://www.cde.ca.gov/statetests/cahsee/background/info.html> >  
[as of February 2, 2004]. More specific content is listed on the website as follows:

The [English] part [of the HSEE] addresses state content standards through grade 10. In reading, this includes vocabulary, decoding, comprehension, and analysis of information and literary texts. In writing, this covers writing strategies, applications, and the conventions of English (e.g. grammar, spelling, and punctuation). The mathematics part of the [HSEE] addresses state standards in grades 6 and 7 and Algebra I. The exam includes statistics, data analysis and probability, number sense, measurement and geometry, mathematical reasoning, and algebra. Students are also asked to demonstrate a strong foundation in computation and arithmetic, including working with decimals, fractions, and percents.

<sup>5</sup> Statutory references are to the Education Code, unless otherwise indicated.

<sup>6</sup> Education Code section 6085 1, subdivision (a).

<sup>7</sup> < <http://www.cde.ca.gov/statetests/cahsee/background/info.html> >  
[as of February 2, 2004].

<sup>8</sup> California Code of Regulations, title 5, section 1200, subdivision (g). This section was amended in May 2003 to add “. . .or a person assigned by a nonpublic school to implement a student’s Individualized Education Program (IEP) . . . .”

The test administrator may be assisted by a test proctor, “an employee of a school district who has received training specifically designed to prepare him or her to assist the test administrator in administration of the [HSEE].”<sup>9</sup> Others with roles in the HSEE are the district coordinator and test site coordinator, whose functions are discussed below.

In addition to the 200 1 amendment to the HSEE statutes mentioned above (Stats. 200 1, ch. 716), the Legislature also amended the HSEE program in 2002 (Stats. 2002, ch. 808, Sen. Bill No. 1476), and in 2003 (Stats. 2003, ch. 803, Sen. Bill No. 964). These statutes are not before the Commission, which makes no findings on them unless noted herein.

Additionally, the HSEE regulations <sup>10</sup> were amended in May 2003 and are in the process of being amended again. According to the California Department of Education’s (CDE) website,<sup>11</sup> the comment period for the latter regulation amendments ended September 30, 2003. The amended regulations, like the statutes, are not before the Commission. Thus, the Commission makes no findings on regulations adopted subsequent to March 2003, when the test claim was amended to add the regulations<sup>12</sup> (the May 2003 amendments to the HSEE regulations are footnoted).

#### B. Prior Law

The test claim legislation included a finding that “[l]ocal proficiency standards established pursuant to Section 5 12 15 of the Education Code are generally set below a high school level and are not consistent with state adopted academic content standards.” (Stats. 1999x, ch. 1, § 1). These proficiency standards were enacted in 1977 and repealed by the test claim legislation. They required school districts with grades 6-12 to establish basic skills proficiency standards and administer proficiency assessments (usually tests) that all pupils must pass to graduate. The locally developed tests and standards were aligned to local curriculum, and at a minimum addressed, “reading comprehension, writing and computational skills, in the English language” (former Ed. Code, § 5 12 15, subd. (c)). Different standards and testing procedures were authorized for special education pupils and other pupils with a diagnosed learning disability (former Ed. Code, § 51215, subd. (d)). Assessment of pupil proficiency in English was required at least once during grades 4 through 6, and 7 through 9, and twice during grades 10 and 11. Districts could defer assessing pupils of limited English proficiency until the pupils had

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<sup>9</sup> California Code of Regulations, title 5, section 1200, subdivision (h).

<sup>10</sup> References to regulations are to California Code of Regulations, title 5, sections 1200- 1225, unless otherwise indicated.

<sup>11</sup> < <http://www.cde.ca.gov/regulations/cahseeseb15dnot090903.pdf> > [as of February 2, 2004].

<sup>12</sup> California Code of Regulations, title 5, section 12 18.5 was adopted in May 2003 and requires the school district to administer the HSEE to the pupil with modifications if the pupil’s IEP or Section 504 plan indicates that it is appropriate and necessary for a pupil to use modifications. As a regulation adopted after March 2003 the test claim amendment, the Commission makes no finding on Section 12 18.5.

received at least 24 months of instruction, including six months of instruction in English (former Ed. Code, § 5 12 16, subd. (a)).

### C. Federal Law

Some of the HSEE activities arise under federal law, warranting a summary of those statutes.

**Individuals with Disabilities Education Act:** Administering statewide assessments with accommodations to disabled students, and Individualized Education Programs (IEPs) are provided for under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.), the purposes of which are stated in 20 USC. § 1400 (d):

(l)(A) to ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services . . . (B) to ensure that the rights of children with disabilities and parents . . . are protected; and (C) to assist States, localities, educational services agencies, and Federal agencies to provide for the education of all children with disabilities;

Other purposes of the IDEA are, “early intervention services for infants and toddlers with disabilities . . . to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities.. .and to assess, and ensure the effectiveness of efforts to educate children with disabilities.” (*Ibid.*) Assistance is available to states (20 U.S.C. § 1411, 1412) and local educational agencies (20 U.S.C. § 1413) that meet specified criteria (34 C.F.R. § 300.110 (1999)). IDEA requires that disabled children be “included in general State and district-wide assessment programs, with appropriate accommodations, where necessary” (20 U.S.C. § 1412 (a)( 17), 34 C.F.R. § 300.138 (1999).) IDEA also provides for the IEP, a document with specified contents that includes (1) measurable annual goals to meet the disabled child’s needs regarding the curriculum and other educational needs, and (2) the special education and aids and services to be provided to the child (20 U.S.C. § 1414 (d)). The HSEE statutes and regulations conform to IDEA’s statewide assessment, accommodations, and IEP requirements.

The predecessor to IDEA is the federal Education of the Handicapped Act (FEHA), which since its 1975 amendments has

required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412 (a).) The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states [citations omitted]. . . . The Supreme Court has noted that Congress intended the act to establish “a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children.” [citations omitted.]<sup>13</sup>

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<sup>13</sup> *Hayes v. Commission on State Mandates*, (1992) 11 Cal. App. 4th 1564, 1587.

The *Hayes* court held that FEHA is a federal mandate.<sup>14</sup> *Hayes* also held,

To the extent the state implemented the act [FEHA] by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention.<sup>15</sup>

**No Child Left Behind Act:** The federal government required statewide systems of assessment and accountability (such as HSEE) for schools and districts participating in the Title I program under the Improving America’s Schools Act (IASA) of 1994. In 2002, the federal No Child Left Behind (NCLB) Act replaced the IASA. Under NCLB, annual assessments in mathematics, reading and science are required (20 U.S.C. § 63 11 (b)(3)(A), 34 C.F.R. § 200.2 (a) (2002)), although the science assessments need not be conducted until the 2007-2008 school year (Ibid). States are also required, by school year 2002-2003, to “provide for an annual assessment of English proficiency . . .of all students with limited English proficiency.. . .” (20 U.S.C. § 63 11 (b)(7).) One of the requirements of the assessment system is that it “be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.” (34 C.F.R. § 200.2 (b)(2) (2002).) The assessment system, like all the NCLB requirements, is merely a condition on grant funds (20 U.S.C. § 63 11 (a)(l)) that is not otherwise mandatory (20 U.S.C. §§ 6575, 7371).

**Equal Educational Opportunities Act of 1974, Title VI of the Civil Rights Act:** The test claim statute states that the HSEE, “regardless of federal financial participation, shall comply with Title VI of the Civil Rights Act (42 U.S.C. § 2000d et seq.), its implementing regulations (34 C.F.R. Part 100), and the Equal Educational Opportunities Act of 1974 (EEOA) (20 U.S.C. 1701).”<sup>16</sup> Title VI of the Civil Rights Act prohibits discrimination on grounds of race, color or national origin on programs or activities receiving federal financial assistance. The EEOA states that all public school children “are entitled to equal educational opportunity without regard to race, color, sex or national origin, [and] the neighborhood is the appropriate basis for determining public school assignments.” (20 U.S.C. 1701.)

#### D. Prior Test Claims

In December 200 1, the Commission found that notifying parents about the HSEE (Ed. Code, § 48980, subd. (e), as amended in 2000) is a reimbursable mandate in the *Annual Parent Notification* test claim (99-TC-09 and OO-TC-12). The Trinity Union High School District (current claimant) did not plead section 48980. Although the Commission already made findings on section 48980 and therefore does not have jurisdiction over that statute, the *Annual Parent Notification* test claim impacts findings in this claim on section 60850, subdivisions (e)( 1) and (f)( 1) regarding parental notification, as discussed below.

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<sup>14</sup> *Id.* at page 1592.

<sup>15</sup> *Id.* at page 1594.

<sup>16</sup> Education Code section 60850, subdivision (e)(2).

California's other statewide student-testing requirement is the Standardized Testing and Reporting (STAR) program. On August 24, 2000, the Commission found the STAR statutes and regulations<sup>17</sup> to be partially reimbursable (97-TC-23).

### **Claimant's Position**

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 175 14. Claimant seeks reimbursement for the costs of:

- (1) field testing the HSEE by selected school districts before implementation to ensure the HSEE is free from bias and its content is valid and reliable;
- (2) administration of the HSEE in the 2001-02 school year to all pupils in grade 10 and administration of any part of the HSEE to all pupils who were in grade 10 in the 2001-02 school year until each section of the examination has been passed;
- (3) administration of the HSEE to all pupils in grades 10, 11, or 12 on the dates designated by the Superintendent of Public Instruction (SPI);
- (4) providing HSEE results to all pupils within eight weeks of administering the exam and providing HSEE results to pupils that failed any portion of the exam in time for the pupil to retake that portion of the exam at the next administration;
- (5) meetings to discuss restructuring academic offerings to pupils who do not demonstrate the skills necessary to succeed on the HSEE;
- (6) providing information as requested by the SPI and independent evaluators;
- (7) training school district staff regarding administration of the HSEE;
- (8) modifying school district policies and procedures to reflect the requirements outlined in the test claim legislation; and
- (9) any additional activities identified as reimbursable during the Parameters and Guidelines phase.

In March 2003, claimant amended the test claim to add California Code of Regulations, title 5, sections 1200 – 1225. These regulations address HSEE-related topics, including definitions of terms, pupil identification, documentation, pupil information, data for analysis, notice, HSEE district coordinator and test site coordinator, test security, test site delivery, timing/scheduling, allowable accommodations for pupils with disabilities or English learners, requests for accommodations, use of modifications, independent work, invalidation of test scores, cheating, and apportionment. As stated above, this analysis only concerns the HSEE regulations that were operative as of March 2003 when claimant amended the test claim.

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<sup>17</sup> Education Code sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, as amended by Statutes 1997, chapter 828; and California Code of Regulations, title 5, sections 850-874.

Claimant's responses to DOF's comments are in the "discussion" section of this analysis. Claimant submitted comments on the draft staff analysis in February 2004 in which it "agrees with most of the analysis." Claimant disagrees on three issues that are discussed below. Attached to claimant's comments on the draft analysis are six declarations from school districts to show the HSEE costs exceed the HSEE apportionment.

### **State Agency Position**

In its April 2001 comments<sup>18</sup> on the test claim, DOF states that no provisions are reimbursable because they are either voluntary (in the case of the first field test) or already funded in the budget. According to DOF, test administration, data collection and training staff are already budgeted. Test administration 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 HSEE administration falls within the time allotted for regular instruction. DOF also states that section 60853, subdivision (b) is merely a statement of legislative intent. This section concerns school district restructuring of academic offerings to pupils who have not demonstrated skills necessary to succeed on the HSEE.

DOF's assertions did not include support by "documentary evidence . . . authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so."<sup>19</sup> DOF's comments are not relied on by the Commission, which reaches its own conclusions based on evidence in the record.

Neither CDE nor any other state agency commented on the test claim.

## **COMMISSION FINDINGS**

The courts have found that article XIII B, section 6 of the California Constitution<sup>20</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>21</sup> "Its purpose is to preclude the state from shifting financial responsibility for

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<sup>18</sup> Letter from Department of Finance, April 3, 2001.

<sup>19</sup> California Code of Regulations, title 2, section 1183.02, subdivision (c)(1).

<sup>20</sup> Article XIII B, section 6 provides:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

<sup>21</sup> *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

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.”<sup>22</sup> 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.<sup>23</sup> 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.

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.<sup>24</sup> 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.<sup>25</sup> Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>26</sup>

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.<sup>27</sup> In making its decisions, the Commission must strictly construe article XIII B, section 6

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<sup>22</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 8 1.

<sup>23</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal. App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that:

[A]ctivities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.

The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or “draconian” consequences. (*Id.* at p. 754 .)

<sup>24</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

<sup>25</sup> *Lucia Mar Unified School District*, *supra*, at page 835.

<sup>26</sup> *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; Government Code sections 17514 and 17556.

<sup>27</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”<sup>28</sup>

This test claim presents the following issues:

- ⌘ Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- ⌘ Does the test claim legislation impose a “new program or higher level of service” on school districts within the meaning of article XIII B, section 6 of the California Constitution?
- ⌘ Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

**Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?**

**A. Does the test claim legislation impose state-mandated duties?**

The issue is whether any of the following constitute state-mandated activities that are subject to article XIII B, section 6.

**Duties of the Superintendent of Public Instruction (Ed. Code, § 60850, subs. (a), (b), (d), (e)(2), (e)(3), (e)(4) & (h).):** Subdivision (a) of this section requires the SPI to develop the HSEE in accordance with statewide content standards adopted by the State Board of Education (SBE). Subdivision (b) requires the SPI, with the approval of the SBE, to establish a HSEE Standards Panel to assist in the design and composition of the HSEE and to ensure it is aligned with statewide content standards. Subdivision (d) requires the SPI to submit the HSEE to the Statewide Pupil Assessment Review Panel to review the exam. Subdivision (e)(2) requires that the HSEE comply with federal anti-discrimination statutes as mentioned above in the background. Subdivision (e)(3) concerns the validity for the HSEE, which is the SPI’s responsibility. Subdivision (e)(4) requires the HSEE to “be scored as a criterion referenced examination.” Scoring appears to be the publisher’s function based on section 12 10, subdivision (b) of the HSEE regulations that requires returning test materials “in the manner . . . required by the publisher.” DOF also commented that the publisher scores the HSEE. Subdivision (h) states that the chapter does not prohibit a district from requiring pupils to pass additional exit examinations approved by the district. Because these provisions do not mandate a school district to perform an activity, they are not subject to article XIII B, section 6.

**Field-testing (Ed. Code, § 60850, subd. (c).):** This subdivision states that the SPI “shall require that the examination be field-tested before actual implementation to ensure that the examination is free from bias and that its content is valid and reliable.” The statutory language does not mandate that every school district participate in field-testing.

Claimant states that activities associated with field-testing the HSEE represent a new program imposed on school districts.

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<sup>28</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 18 17; *County of Sonoma v. Commission on State Mandates*, *supra*, 84 Cal. App .4th at page 1280.

DOF commented that three field tests were scheduled, the first during fall 2000. DOF states that the CDE randomly selected 200 high schools to participate, but participation was voluntary and schools were given the option to refuse to administer the field test. According to DOF, the second and third field tests were incorporated in the March and May 2001 administrations of the HSEE as part of the actual exam, which is covered by the funds in the budget. DOF argues that to the extent that schools voluntarily participate in field-testing, doing so is not a mandated cost.

Claimant contends that the \$3 appropriation per test administration is insufficient to cover the costs of the March and May 2001 HSEE field tests. According to claimant, the appropriation does not rise to the level required in Government Code section 17556, subdivision (e) to completely offset any claims that the activities associated with field-testing the HSEE are reimbursable. This is discussed under issue 3 below.

There is no evidence in the record that claimant or any school district was required to participate in field-testing. On February 3, 2003, Commission staff sent a letter to claimant's representative requesting documentary evidence regarding claimant's participation in the field-testing for each administration of the HSEE, but received no response.

Therefore, the Commission finds that section 60850, subdivision (c), is not subject to article XIII B, section 6 because (1) there is a lack of evidence in the record regarding claimant's participation in field testing, and (2) the statutory language does not mandate school district participation.

**HSEE results (Ed. Code, § 60851, subd. (d).):** Section 6085 1, subdivision (d),<sup>29</sup> states:

The results of the high school exit examination shall be provided to each pupil taking the examination within eight weeks of the examination administration and in time for the pupil to take any section of the examination not passed at the next administration. A pupil shall take again only those parts of the examination he or she has not previously passed and may not retake any portion of the exam that he or she has previously passed.

Subdivision (d) requires that HSEE results be provided to pupils within eight weeks, but does not specify who provides them. Prior law did not require notification of HSEE results to pupils.

DOF commented that the publisher is required to score all tests within an appropriate time frame so that pupils receive their results within eight weeks of testing. DOF states that the amount provided in the budget covers the costs associated with reporting of test results, including mailings. Claimant disputes the adequacy of the funding for this activity.

Claimant's February 2004 comments on the draft staff analysis include declarations from six school districts that providing the test results is a district activity. Claimant relies on these declarations for the interpretation of section 6085 1, subdivision (d) regarding districts' requirement to provide test results.

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<sup>29</sup> This statute is currently section 6085 1, subdivision (e).

Interpretation of statutes, however, is a question of law.<sup>30</sup> The Commission cannot rely on claimant's factual assertions in interpreting the test claim statute. Moreover, the "determination whether the statutes.. .at issue establish a mandate under section 6 is a question of law."<sup>31</sup> The test claim statutes and regulations are silent on the issue of who provides the HSEE results, as is the legislative history<sup>32</sup> of the test claim statute.

Therefore, the Commission finds that providing HSEE results to all pupils within eight weeks of administering the HSEE and providing results to pupils that failed any portion of the HSEE in time for the pupil to retake that portion of it at the next administration is not a state mandate.

**Adult students (title 5 regulations):** Many of the title 5 regulations apply expressly to adult students as well as high school pupils.<sup>33</sup> Section 1200, subdivision (f) defines an "Eligible adult student" as:

. . . a person who is enrolled in an adult school operated by a school district and who has not passed either the English/language arts section or the mathematics section of the high school exit examination. This term does not include pupils who are concurrently enrolled in high school and adult school.

Therefore, the issue is whether administration of the HSEE and the related regulations are mandates as applied to adult students.

Education Code section 48200 states that each person between the ages of 6 and 18 years not otherwise exempted is subject to compulsory full-time education. Education Code section 52502, regarding adult classes, provides:

The governing board of a high school district or unified school district **may** establish classes for adults. If such classes result in average daily attendance in any school year of 100 or more, such districts **shall** establish an adult school for the administration of the program. [Emphasis added.]

Section 52502 contains no requirement for districts to establish adult classes. Only if the district first decides, in its discretion, to establish adult classes would it need to establish an adult school if the average daily attendance equals 100 or more. Therefore, the Commission finds that under article XIII B, section 6, the statutes and regulations concerning administration of the HSEE to adult students are not mandates.

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<sup>30</sup> *Taxara v. Gutierrez* (2003) 114 Cal. App. 4<sup>th</sup> 945, 950.

<sup>31</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

<sup>32</sup> The Legislative Counsel's digest of the test claim legislation suggests that this is a district activity (Sen. Bill No. 2 (1999-2000 1st Ex. Sess.)) but Legislative Counsel's opinion is not determinative on the issue of a mandate. *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

<sup>33</sup> The following title 5 regulations apply to both high school pupils and adult students: sections 1205, 1206, 1207, 1211, 1215, 1216, 1217, 1218, 1219, 1219.5, and 1220.

**Restructuring academic offerings (Ed. Code, § 60853, subds. (b) & (c).):** Section 60853, subdivision (b), as added by the test claim statute, provides:

**It is the intent** of the Legislature that a school district **consider** restructuring its academic offerings reducing the electives available to any pupil who has not demonstrated the skills necessary to succeed on the exit examination, so that the pupil can be provided supplemental instruction during the regularly scheduled academic year. [Emphasis added.]

Claimant contends that this provision requires meetings to discuss restructuring academic offerings to pupils who do not demonstrate the skills necessary to succeed on the HSEE. Claimant argues that the Legislature requires, at a minimum, that the school site meet to determine if restructuring is necessary to enable pupils to garner the skills necessary to pass the exit examination. Claimant argues that DOF's position ignores legislative intent for school districts to consider restructuring academic offerings.

Claimant's February 2004 comments reiterate this argument, seeking reimbursement for the initial meeting where a district must consider activities associated with restructuring the pupil's academic offerings. Claimant contends that the Legislature requires the school meet to determine if restructuring academic offerings is necessary to enable students to pass the exit examination. Claimant argues that section 60853's overall intent is for districts to prepare pupils to pass the exit examination, as stated in subdivision (a)'s call for using "regularly available resources and any available supplemental resources" to prepare pupils to pass the HSEE, and as stated in subdivision (c)'s statement that a "school district should prepare pupils to succeed" on the HSEE. Claimant argues these statements of legislative intent evidence the Legislature's overriding concern that school districts help prepare pupils to pass the HSEE.

DOF argues that this section merely states legislative intent. To the extent that schools restructure academic offerings in light of pupil performance on the HSEE, they do so on a voluntary basis. Therefore, DOF asserts there are no mandated costs.

The Commission finds that section 60853, subdivision (b) does not require meetings to discuss restructuring academic offerings to pupils who lack skills to pass the HSEE. The language of the statute is plainly permissive: "It is the intent of the Legislature that a school district **consider** restructuring its academic offerings.. ." (emphasis added). If the Legislature had intended to require restructuring academic offerings, it could have used mandatory language to do so (e.g., school districts shall restructure.. ).<sup>34</sup> Stating intent that school districts "consider" restructuring academic offerings does not make the restructuring activity mandatory. Therefore, based on the plain language of section 60853, subdivision (b), the Commission finds that restructuring academic offerings, or meeting to restructure academic offerings for pupils who lack the skills to pass the HSEE, is not mandated, and thus not subject to article XIII B, section 6.

Similarly, subdivision (c) states that school districts "**should** prepare students to succeed on the exit examination," and "... districts **are encouraged to** use existing resources to ensure that all pupils succeed." [Emphasis added.] Again, mandatory language was not

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<sup>34</sup> Education Code section 75 states that "shall" is mandatory.

used. “‘Should’ generally denotes discretion and should not be construed as ‘shall.’”<sup>35</sup> There is no compulsion to spend revenue in subdivisions (b) and (c), which is necessary for finding a mandate.<sup>36</sup> Rather, these activities are discretionary, and therefore are not state mandates.<sup>37</sup>

Thus, because they do not require a school district activity, the Commission finds that subdivisions (b) and (c) of section 60853 are not subject to article XIII B, section 6.

**Test Proctors (Cal. Code Regs., tit. 5, § 1200, subd. (h).):** This section defines a test proctor as “an employee of a school district who has received training specifically designed to prepare him or her to assist the test administrator in administration of the [HSEE].” (Cal. Code Regs., tit. 5, § 1200, subd. (h).) However, there is no requirement for school districts to use proctors for administering the HSEE.<sup>38</sup> Therefore, the Commission finds that using proctors is discretionary and therefore not an activity mandated by the state.

**Permissive accommodations (Cal. Code Regs., tit. 5, §§ 1217, subd. (d), 1218, 1219 & 1219.5.):** Section 1217, subdivision (d) authorizes a school district to request an accommodation from the CDE pursuant to section 12 18 if the pupils individualized education program (IEP) team or 504 plan team proposes an accommodation for use on the HSEE not included in subdivision (b) of section 1217. Section 1218 authorizes the school district to request accommodations from CDE not included in section 12 17, subdivision (b). Section 12 18 also specifies the content for the request. Section 12 19 requires the district to ensure that all test responses are the independent work of the pupil, and prohibits assistance to pupils in determining how the pupil will respond to each question, or leading the pupil to a response. Section 1219 prohibits school personnel from assisting pupils rather than mandating an activity.<sup>39</sup> Section 12 19.5 provides that the pupil’s scores will be invalidated if a district allows a pupil to take the HSEE using one or more accommodations determined by the CDE to fundamentally alter what the test measures.<sup>40</sup> Because these sections authorize but do not require<sup>41</sup> (or in the case of sections 1219 and 12 19.5, merely prohibit) school district activities, the Commission finds that they are not subject to article XIII B, section 6.

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<sup>35</sup> Sutherland’s Statutes and Statutory Construction (5<sup>th</sup> ed. 1992) section 57.03, page 7.

<sup>36</sup> *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App. 4th, 1176, 1189.

<sup>37</sup> *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal. 4th 727, 742; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

<sup>38</sup> The HSEE administration regulations, California Code of Regulations, title 5, subdivisions 1204 - 1212, do not require the use of proctors.

<sup>39</sup> Section 1219 was non-substantively amended in May 2003 to alter the note.

<sup>40</sup> Section 1219.5 was non-substantively amended in May 2003 to alter the note.

<sup>41</sup> *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal. 4th 727, 742.

**Federally mandated accommodations (Ed. Code, § 60850, subd. (g), Cal. Code Regs., tit. 5, §§ 1216 – 1217.):** Section 60850, subdivision (g) of the test claim statute provides:

The examination shall be offered to individuals with exceptional needs, as defined in Section 56026,<sup>42</sup> in accordance with paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code and Section 794 and following of Title 29 of the United States Code. Individuals with exceptional needs shall be administered the examination with appropriate accommodations, where necessary.

This statute requires the HSEE be offered to pupils with disabilities (as defined in state and federal law), and that appropriate accommodations be provided where necessary. The title 5 regulations list what is appropriate. Neither claimant nor DOF commented on the HSEE administration accommodations.

As stated above, the court in *Hayes* stated that the federal Education of the Handicapped Act is a federal mandate. Section 60850, subdivision (g) merely implements the IDEA (an amendment/successor to the federal Education of the Handicapped Act), and IDEA's regulations<sup>43</sup> in administering the HSEE. Therefore, the Commission finds that section 60850, subdivision (g) is not a state mandate subject to article XIII B, section 6, because it was inserted into the HSEE legislation to implement a federal law or regulation.<sup>44</sup>

Similarly, section 1216 of the HSEE regulations states,

[A]ccommodations will be allowed that are necessary and appropriate to afford access to the test, consistent with federal law, so long as the accommodations do not fundamentally alter what the examination is designed to measure.

As with section 60850 above, section 1216 merely implements a federal law (IDEA). Therefore, the Commission finds that section 12 16 is also not a state mandate subject to Article XIII B, section 6.<sup>45</sup>

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<sup>42</sup> This section excludes “. . .pupils whose educational needs are due primarily to limited English proficiency.. .” from the definition of students with exceptional needs. (Ed. Code, § 56026, subd. (e)) . It includes “special needs” students up to age 22.

<sup>43</sup> 34 C.F.R. section 300.138 provides, “The State must have on file with the Secretary [of Education] information to demonstrate that-- (a) Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary.. .”

<sup>44</sup> *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 816.

<sup>45</sup> Section 12 16 was non-substantively amended in May 2003 to change the note.

Section 1217, subdivision (a) of the regulations states:

Where necessary to access the test, pupils . . . with disabilities shall take the [HSEE] with those accommodations that are necessary and appropriate to address the pupil's . . . identified disability(ies) and that have been approved by their individualized education program [IEP] teams or 504 plan teams,<sup>46</sup> including but not limited to those accommodations that the pupil. . . has regularly used during instruction and classroom assessments, provided that such accommodations do not fundamentally alter what the test measures. Approved accommodations for the [HSEE] must be reflected in the pupil's . . . [IEP] or 504 plan.

Subdivision (b) of section 1217 lists accommodations that do not fundamentally alter what the test measures,<sup>47</sup> and subdivision (c) lists accommodations that would fundamentally alter what the test measures.<sup>48</sup>

As with the other accommodations discussed above, those added to a pupil's IEP or 504 plan are required by federal law. Therefore, the Commission finds that section 12 17, subdivisions (a) (b) and (c), listing HSEE accommodations into the pupil's IEP or 504 plan, is not a state mandate and is not subject to article XIII B, section 6.

In summary, because the test claim statutes and regulations discussed above are not state mandates, they are not subject to article XIII B, section 6, i.e., Education Code section 60850, subdivisions (a), (b), (c), (d), (e)(2), (e)(3), (e)(4), (g) and (h), Education Code section 60853, subdivisions (b) and (c), and California Code of Regulations, title 5, sections 1200, subd. (h), 1216, 1217, 1218, 1219 and 1219.5.

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<sup>46</sup> A 504 plan is a document falling under the provisions of the Rehabilitation Act of 1973. (29 U.S.C. § 794, 34 C.F.R. § 104 et. seq.). It is designed to plan a program of instructional services to assist students with special needs who are in a regular education setting. An Individualized Education Program (IEP) is an IDEA program for special education students. (20 U.S. C. § 1414 (d)).

<sup>47</sup> According to subdivision (b) of section 1217 of the title 5 regulations:

Accommodations that do not fundamentally alter what the test measures include, but may not be limited to: (1) Presentation accommodations: Large print versions; test items enlarged through mechanical or electronic means; Braille transcriptions provided by the test publisher or a designee; markers, masks, or other means to maintain visual attention to the test or test items; reduced numbers of items per page; audio presentation on the math portion of the test, provided that an audio presentation is the pupil's . . . only means of accessing written material.

<sup>48</sup> Section 1217, subdivision (c) was non-substantively amended in May 2003 as follows: "The following are modifications ~~accommodations are not allowed~~ because they ~~have been determined to~~ fundamentally alter what the test measures: " The May 2003 amendment also changed the section heading and note.

**B. Is the remaining test claim legislation a “program” under article XIII B, section 6?**

For the remainder of this analysis, “test claim legislation” refers to the statutes and regulations not already discussed: Education Code sections 60850, subdivisions (e)(1) and (f), 60851, 60853, subdivision (a), and 60855; and California Code of Regulations, title 5, sections 12004215, 1217.5, 1220, and 1225 (except § 1200, subd. (h)).

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” As discussed above, this means a program 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.<sup>49</sup> Only one of these findings is necessary to trigger article XIII B, section 6.<sup>50</sup>

The test claim legislation consists of educational testing as a means to measure pupil achievement and school accountability. These activities are within the purview of public education, a program that carries out a governmental function of providing a service to the public.<sup>51</sup> Moreover, the test claim legislation imposes unique requirements on school districts that do not apply generally to all residents and entities of the state.

Therefore, the test claim legislation is a program that carries out the governmental function of educational testing, and a law which, to implement state policy, imposes unique requirements on school districts and does not apply generally to all residents and entities in the state. As such, the Commission finds that the test claim legislation constitutes a program within the meaning of article XIII B, section 6.

**Issue 2: Does the test claim legislation impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution?**

Article XIII B, section 6 of the California Constitution states, “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 determine if the “program” is new or imposes a higher level of service, the test claim legislation is compared to the legal requirements in effect immediately before the enactment of the test claim legislation.<sup>52</sup>

**Adequate notice (Ed. Code, § 60850, subds. (e)(1) & (f)(1).):** Subdivision (e)(1) of section 60850 provides that the “examination may not be administered to a pupil who did not receive adequate notice as provided for in paragraph (1) of subdivision (f) regarding the test.” Subdivision (f)(1) defines “adequate notice” as follows:

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<sup>49</sup> *County of Los Angeles v. State of California*, supra, 43 Cal.3d 46, 56.

<sup>50</sup> *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

<sup>51</sup> “Education in our society is . . . a peculiarly governmental function.” *Long Beach Unified School District v. State of California*, supra, 225 Cal.App.3d 155, 172.

<sup>52</sup> *Lucia Mar Unified School Dist. v. Honig*, supra, 44 Cal.3d 830, 835.

“Adequate notice” means that the pupil and his or her parent or guardian have received written notice, at the commencement of the pupil’s 9<sup>th</sup> grade, and each year thereafter through the annual notification process established pursuant to Section 48980, **or if a transfer pupil, at the time the pupil transfers**. A pupil who has taken the exit examination in the 10<sup>th</sup> grade is deemed to have had “adequate notice” . . . . [Emphasis added.]

This statute prohibits giving the HSEE without providing adequate notice pursuant to section 48980.

In 2001, the Commission determined (in *Annual Parent Notification*, 99-TC-09 and 00-TC-12) that providing HSEE notification to parents, pursuant to section 48980, subdivision (e), was a reimbursable state mandated activity. School districts are eligible for reimbursement under the *Annual Parent Notification* (APN) parameters and guidelines, which state:

The Commission determined that Education Code section 48980, subdivisions (e) . . . resulted in costs mandated by the state by requiring school districts to provide to parents the following:

a. Notice that pupils will be required to pass a high school exit examination as a condition of graduation. (Ed. Code, § 48980, subd. (e).)<sup>53</sup>

Claimant is not eligible for reimbursement under this claim for activities already decided under the APN parameters and guidelines.

In its February 2004 comments, claimant argues that the APN parameters and guidelines require annual notification, but do not apply to transfer students. Claimant points out that section 48981 requires the notice “be sent at the time of registration for the first semester or quarter of the regular school term” but that neither section 48980 nor 48981 require notifications for transfer students.

The Commission agrees. Providing notice to transfer students of the HSEE is required by section 60850, subdivisions (e)(1) and (f)(1), but not by section 48980, upon which the APN parameters and guidelines are based, nor elsewhere in California law. Therefore, the Commission finds that section 60850, subdivisions (e)(1) and (f)(1), is a new program or higher level of service on school districts for the purpose of notifying parents of *transfer* students who enroll after the first semester or quarter of the regular school term that, commencing with the 2003-04 school year, and each school year thereafter, each pupil completing 12<sup>th</sup> grade will be required to successfully pass the HSEE. The notification shall include, at a minimum, the date of the HSEE, the requirements for passing the HSEE, and the consequences of not passing the HSEE, and that passing the HSEE is a condition of graduation.

**Documentation of notice (Cal. Code. Regs., tit. 5, § 1208.):** Section 1208 of the title 5 regulations requires school districts to “maintain documentation that the parent or guardian of each pupil has received written notification as required by Education Code sections 48980 (e) and 60850 (f)(1).”

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<sup>53</sup> Commission on State Mandates, Amended Parameters and Guidelines, *Annual Parent Notification*, 99-K-09, 00-TC- 12, adopted 11130195, last amended 5/23/02, page 7.

Prior law did not require maintaining documentation of HSEE notice to parents.<sup>54</sup> Neither claimant nor DOF commented on maintaining documentation of notice.

Thus, as a new requirement, the Commission finds (pursuant to Cal. Code Regs., tit. 5, § 1208) that the activity of maintaining documentation that each pupil's parent or guardian has received written notification of the HSEE is a new program or higher level of service.

**Determining English language skills (Cal. Code Regs., tit. 5, § 1217.5):** This regulation<sup>55</sup> states: "English learners must read and pass the [HSEE] in English. School districts must evaluate pupils to determine if they possess sufficient English language skills at the time of the [HSEE] to be assessed with the test."<sup>56</sup> If not, districts may provide additional time as an accommodation, in addition to instruction pursuant to Education Code section 60852.

Prior law, enacted in 1978, required that pupils of limited English proficiency be assessed to determine their primary language proficiency.<sup>57</sup> These provisions were sunset in 1987.<sup>58</sup> Education Code section 31313 requires annual assessments of English-learner pupils' English skills, but not until the 2000-2001 school year,<sup>59</sup> so it does not predate the HSEE legislation.

Prior law, repealed by the test claim statute, required a "limited-English proficient pupil" to "be assessed for basic skills in the English language upon his or her own request or

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<sup>54</sup> Education Code section 49062. California Code of Regulations, title 5, section 432 requires retention of various kinds of pupil records, including "Mandatory Permanent Pupil Records," "Mandatory Interim Pupil Records" and "Permitted Records," each of which is defined to include specified data. Section 437 of the title 5 regulations provides for retention and destruction. However, none of these include the HSEE parental notification. It appears that Mandatory Interim Records (that includes parental prohibitions and authorizations of pupil participation) most closely resembles the HSEE notification. According to section 437, subdivision (c), Mandatory Interim Records, unless forwarded to another district, are "adjudged to be disposable when the student leaves the district or when their usefulness ceases." However, because the length of maintenance for HSEE notification records is specified in neither the statutes nor the regulations, the issue is not addressed in this analysis.

<sup>55</sup> Section 1217.5 was non-substantively amended in May 2003 to change only the note.

<sup>56</sup> The issue of whether this regulation constitutes a federal mandate under NCLB or its predecessor is discussed below under issue 3.

<sup>57</sup> Education Code section 52164.1 (sunset). This statute and related ones are the subject of a pending test claim: *California English Language Development Test 2* (03-TC-06).

<sup>58</sup> Education Code section 62000.2, subdivision (d).

<sup>59</sup> This is the subject of a pending test claim: *California English Language Development Test* (00-TC-16).

upon the request of his or her parent or guardian.” (former Ed. Code, § 5 12 16, subd. (a).) This statute also provided,

No individual English-speaking pupil or limited-English-proficient pupil shall receive a high school diploma unless he or she has passed the English language proficiency assessment normally required for graduation. (Former Ed. Code, § 5 1216, subd. (b).)

Prior law required an English assessment on request, and passage of the English language proficiency assessment to receive a high school diploma. Passage of this assessment for a diploma merely required assigning a pass/fail grade or score. Section 12 17.5, on the other hand, also requires assigning a grade or score, and also expressly requires determining whether the pupil would take the HSEE based on the evaluation.

Therefore, the Commission finds that section 12 17.5 constitutes a new program or higher level of service only for the activity of determining whether an English-learner pupil possesses sufficient English language skills at the time of the HSEE to be assessed with it.

**HSEE administration (Ed. Code, § 60851, subds. (a), (b) & (c); Cal. Code Regs., tit. 5, §§ 1200, 1215, 1203 – 1206, 1209, 1210 & 1212.):** Subdivision (a) of section 60851, as originally enacted reads:

Commencing with the 2003-04 school year<sup>60</sup> and each school year thereafter, each pupil completing grade 12 shall successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school. Funding for the administration of the exit examination shall be provided for in the annual Budget Act. The Superintendent of Public Instruction shall apportion funds appropriated for this purpose to enable school districts to meet the requirements of subdivisions (a), (b), (c), and (d). The State Board of Education shall establish the amount of funding to be apportioned per test administered, based on a review of the cost per test.

Subdivision (b) originally provided:

A pupil may take the high school exit examination in grade 9 beginning in the 2000-01 school year? Each pupil shall take the high school exit examination in grade 10 beginning in the 2001-02 school year and may take the examination during each subsequent administration, until each section of the examination has been passed.

Subdivision (c) requires the HSEE to be offered in public schools and state special schools that provide instructions in grades 10 through 12 on the dates designated by the SPI, and prohibits administering the HSEE on any dates other than those designated by the SPI as examination or makeup days.

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<sup>60</sup> As indicated above, the HSEE as a graduation requirement has been postponed until the 2006 graduating class, but HSEE administration is not optional for districts.

<sup>61</sup> Statutes 2001, chapter 716, (Assem. Bill No. 1609) amended this sentence to read, “A pupil may take the [HSEE] in grade 9 in the 2000-01 school year only. ”

Claimant pled the activity of administering the HSEE in the 2001-02 school year to all pupils in grade 10, and administering any part of the HSEE to all pupils who were in grade 10 in the 2001-02 school year until each section of the examination has been passed. Claimant also pled the activity of HSEE administration to all pupils in grade 10, 11 or 12 on the dates designated by the SPI.

DOF comments that these requirements would not be reimbursable since districts already receive a per pupil funding rate for up to 180 days (or equivalent minutes) of instruction and HSEE administration falls within the time allotted for regular instruction. DOF's comments and claimant's rebuttal regarding adequacy of funding is discussed below under issue 3.

Prior law did not require administration of the HSEE. Since a certificated employee (acting as a test administrator,<sup>62</sup> or potentially as test site coordinator,<sup>63</sup> or district coordinator<sup>64</sup> or in another capacity) administers the HSEE during normal classroom hours, the question arises as to whether a teacher's time in doing so is reimbursable.

Teacher time: For reasons indicated below, class time minutes used by teachers administering the HSEE constitute instructional minutes that satisfy the school district's minimum minutes per school day required under the Education Code. Accordingly, a teacher's time for HSEE administration is not a new program or higher level of service because the state has not mandated an increased level of service for teachers to administer it that results in increased costs.

Preexisting law states that pupils are not to be enrolled for less than the minimum school day required by law.<sup>65</sup> Minimum school day statutes begin in section 46100, which requires school districts to fix the length of the school day subject to state law. Since before 1959, the state has required public schools to provide education for a minimum of 175 days in a fiscal year.<sup>66</sup> The state has also mandated a minimum number of instructional minutes each school day, which is 240 for grades 4 through 12, exclusive of recesses and lunch.<sup>67</sup> The minimum school days per year and the minimum number of instructional minutes per day did not change as a result of the HSEE statutes or regulations.

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<sup>62</sup> As stated above, the "Test administrator" means a **certificated employee** of a school district who has received training in the administration of the [HSEE] from the [HSEE] district or test site coordinator. " [Emphasis added.] (Former Cal. Code Regs., tit. 5, § 1200, subd. (g).)

<sup>63</sup> Duties are listed in California Code of Regulations, title 5, section 1210, and discussed below.

<sup>64</sup> Duties are listed in California Code of Regulations, title 5, section 1209, and discussed below.

<sup>65</sup> Education Code section 48200.

<sup>66</sup> Education Code section 41420.

<sup>67</sup> Education Code sections 46113, 46115, and 46141.

During the instructional minutes, school districts are required to teach certain courses, and are required to conform the educational program to state standards.<sup>68</sup> Education Code section 5 1220 describes the required courses for grades 7 through 12 to include English and Math, among others.

Instructional preparation time is counted as part of the teacher full-time equivalent.” A “full-time” teaching position is defined as a position for not less than the minimum school day.<sup>70</sup> School districts may, but are not required to have teachers work longer per school day than the minimum number of minutes.<sup>71</sup> In addition, if a school district compensates a teacher for work that is not part of the teacher’s contracted instructional day duties, the same compensation is required to be paid to all teachers that perform like work with comparable responsibilities.<sup>72</sup> Education Code section 45023.5 states that “[n]othing in this section shall be construed as requiring a district to compensate certificated employees for work assignments which are not part of the contracted instructional day duties simply because other employees of the district receive compensation for work assignments which involve different types of service.”<sup>73</sup>

State law requires teachers to provide instruction to pupils during the minimum number of minutes per school day, and does not mandate school districts to require teachers to work beyond the minimum school day. That decision is at the district’s discretion.

In a case about adding a domestic violence training course for public safety officers, the court held that it is not a mandate when the test claim legislation directs “local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.”<sup>74</sup> Similarly, the HSEE legislation merely reallocates instructional time to include administration of the HSEE.

Therefore, based on the plain language of the Education Code, administration of the HSEE is a new activity only if performed by a non-teacher certificated employee, such as an employee holding a service credential.<sup>75</sup> Thus, the Commission finds that HSEE

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<sup>68</sup> Education Code section 5 104 1.

<sup>69</sup> Section 41401, subdivision (d).

<sup>70</sup> Education Code section 45024, which was derived from section 13503 of the 1959 Education Code.

<sup>71</sup> Education Code section 45024.

<sup>72</sup> Education Code section 45023.5.

<sup>73</sup> Education Code section 45023.5 derives from section 1350 1.5 of the 1959 Education Code.

<sup>74</sup> *County of Los Angeles v. Commission on State Mandates*, *supra*, 110 Cal. App. 4th, 1176, 1194.

<sup>75</sup> Service credential employees include those with a specialization in pupil personnel services (Ed. Code, § 44266), specialization in health (Ed. Code, § 44267 & 44267.5)) specialization in clinical rehabilitative services (Ed. Code, § 44268), library media

administration on SPI-designated dates to all pupils in grade 10 beginning in the 2001-2002 school year, and subsequent administrations for students who do not pass until each section of the HSEE has been passed, constitutes a new program or higher level of service. The Commission also finds that administration of the HSEE on SPI-designated dates to pupils in grade 9 in only the 2000-2001 school year who wish to take the HSEE is also a new program or higher level of service.<sup>76</sup> “Administration” does not include teacher time, and is limited to the activities specified in the title 5 regulations outlined below.

Training: According to section 1200, subdivision (g), test administrators are to be trained in administration of the HSEE, and test site coordinators train the test administrators “as provided in the test publisher’s manual.”<sup>77</sup> Training is not listed in the regulations as a district coordinator duty, but section 1200 states that administrators are to be trained by either the test site or district coordinators. Therefore, section 1200 gives district coordinators the flexibility to train.

As to HSEE training generally, where a statute referring to one subject contains a provision, omitting the provision from a similar statute concerning a related subject is significant to show that a different intention existed.<sup>78</sup> Applying this rule, the test claim legislation provisions that do not mention training are significant to show that no training requirement was intended to apply.

Therefore, the Commission finds that training a test administrator either by a test site or (based on § 1200, subd. (g)) district coordinator as provided in the test publisher’s manual<sup>79</sup> is a new program or higher level of service, except that a teacher’s time is not reimbursed.

Additional time accommodation: Section 12 15 allows pupils to have additional time to complete the HSEE within the test security limits provided in section 1211 (discussed below).<sup>80</sup> This accommodation applies to all pupils, not only those with special needs. Prior law did not allocate additional time for taking the HSEE.

The Commission finds that a teacher’s additional time to administer the HSEE during normal classroom hours is not a new program or higher level of service. As discussed above under Teacher time, the state has not mandated an increased level of service to administer the HSEE outside the normal school day, which consists of 240 instructional

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teachers (Ed. Code, § 44269), specialization in administrative services (Ed. Code, § 44270), and limited services credentials (Ed. Code, § 44272).

<sup>76</sup> The test claim legislation was amended by Statutes 2001, chapter 7 16 (Assem. Bill No. 1609) to limit 9<sup>th</sup> grade participation in the HSEE to the 2000-2001 school year.

<sup>77</sup> California Code of Regulations, title 5, section 1210, subdivision (b)(3).

<sup>78</sup> *Moncharsh v. Heily & Blase* (1992) 3 Cal. 4th 1, 26.

<sup>79</sup> < <http://www.ets.org/cahsee/admin.html> > [as of February 2, 2004].

<sup>80</sup> Section 1215 was non-substantively amended in May 2003 to change only the article heading and note.

minutes for grades 4 through 12, excluding recess and lunch.\*’ State law does not mandate school districts to require teachers to work beyond the minimum school day.

However, if a pupil’s IEP requires an additional time accommodation, the extra time would not be a new program or higher level of service because IEP accommodations are required pursuant to federal law, as discussed above.

Therefore, as discussed above, the Commission finds that section 12 15 is a new program or higher level of service only if additional time is not specified in the pupil’s IEP, and only if the test is administered by a non-teacher certificated employee, such as an employee holding a service credential.<sup>82</sup>

Identification: Section 1203 of the regulations states that school personnel at the test site are responsible for accurate identification of eligible pupils who take the HSEE through the use of photo-identification, positive recognition by the test administrator, or some equivalent means of identification. Claimant states that this section provides additional support concerning the numerous activities that will be claimed in the parameters and guidelines phase under “test administration” if the Commission approves this test claim.

Prior law did not require accurate identification of eligible pupils who take the HSEE. Therefore, the Commission finds that section 1203 constitutes a new program or higher level of service.

Grade 10 administration: Section 1204<sup>83</sup> requires districts to offer the exam in grade 10 only at the spring administration. This regulation merely specifies the timing of the HSEE for 10” graders, so the Commission finds that section 1204 does not constitute a new program or higher level of service.

Record of pupils: Section 1205 requires school districts to maintain a record of all pupils who participate in each test cycle of the HSEE, including the date each section was offered, the names of each pupil who took each section, the grade level of each pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken. Claimant states that the section 1205 activities were not required before the CDE adopted these regulations, creating a new program on school districts.

Section 1206 requires school districts to maintain in each pupil’s permanent record the section 1205 information (except grade level). Claimant states that the section 1205 and

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<sup>81</sup> Education Code sections 46113, 46115, and 46141.

<sup>82</sup> Service credential employees include those with a specialization in pupil personnel services (Ed. Code, § 44266), specialization in health (Ed. Code, § 44267 & 44267.5)) specialization in clinical rehabilitative services (Ed. Code, § 44268), library media teachers (Ed. Code, § 44269), specialization in administrative services (Ed. Code, § 44270), and limited services credentials (Ed. Code, § 44272).

<sup>83</sup> Prior to its May 2003 amendment, section 1204 read “Each pupil in grade 10 shall take the high school exit exam only at the spring administration. ” Section 1204 also currently requires districts to offer a make-up test for absent pupils at the next test date designated by the SPI or the next test date designated by the school district.

1206 activities were not required before the CDE adopted these regulations, creating a new program on school districts.

Preexisting law classifies schools records into three categories: Mandatory Permanent Public Records, Mandatory Interim Pupil Records, and Permitted Records. Under Mandatory Interim Pupil Records, schools are required to keep “results of standardized tests administered within the preceding three years.”<sup>84</sup> Under Permitted Records, schools are authorized to keep “standardized test results older than three years.”<sup>85</sup>

The HSEE appears to be a standardized test, which would require it to be kept only for three years as a Mandatory Interim Pupil Record. Section 1206, however, requires that school districts keep HSEE information “in each pupil’s permanent record.” [Emphasis added.] These conflicting regulations are reconciled when the following rule applies:

A specific statutory provision relating to a particular subject, rather than a general statutory provision, will govern in respect to that subject, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.<sup>86</sup>

Section 1206 is the provision that governs the HSEE as the more specific subject, rather than the pupil record regulations that govern the more general “standardized tests.” Thus, section 1206’s requirement to keep HSEE information “in each pupil’s permanent record” is the controlling regulation as to the HSEE.

Because prior law did not require districts to maintain a record of all pupils who participate in each test cycle of the HSEE, and keep HSEE information in the student’s permanent record, the Commission finds that sections 1205 and 1206 constitute a new program or higher level of service.

HSEE district coordination: Section 1209, subdivision (a), requires the superintendent of the district, on or before July 1 of each year, to designate a district employee as the HSEE district coordinator, and requires notifying the publisher of the HSEE of the identity and contact information of that individual. Subdivision (b) specifies the duties of the HSEE district coordinator as follows:

- (1) responding to inquiries of the publisher;
- (2) determining district and school HSEE test material needs;
- (3) overseeing acquisition and distribution of the HSEE;
- (4) maintaining security over the HSEE using the procedures in section 1211 (discussed below);
- (5) overseeing administration of the HSEE;<sup>87</sup>

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<sup>84</sup> California Code of Regulations, title 5, section 432, subdivision (b)(2)(1).

<sup>85</sup> California Code of Regulations, title 5, section 432, subdivision (b)(3)(B).

<sup>86</sup> *Praiser v. Biggs Unified School Dist.* (2001) 87 Cal.App.4th 398, 405.

<sup>87</sup> This was amended in May 2003 to add “in accordance with the manuals or other instructions provided by the test publisher for administering and returning the test. ”

- (6) overseeing collection and return of test material and test data to the publisher;
- (7) assisting the publisher in resolving discrepancies in the test information and materials;
- (8) ensuring all exams and materials are received from school test sites no later than the close of the school day on the school day following administration of the HSEE;
- (9) ensuring all exams and materials received from school test sites have been placed in a secure district location by the end of the day following administration of those tests;
- (10) ensuring that all exams and materials are inventoried, packaged, and labeled in accordance with instructions from the publisher and ensuring the materials are ready for pick-up by the publisher no more than five working days following administration of either section in the district; and
- (11) ensuring that the HSEE and test materials are retained in a secure, locked location in the unopened boxes in which they were received from the publisher from the time they are received in the district until the time of delivery to the test sites.

Subdivision (c) of section 1209 requires the district coordinator and superintendent, within seven days of completion of the district testing, to certify to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

Prior law did not require designating a district employee as the HSEE district coordinator, or notifying the HSEE publisher of the identity and contact information of that individual. Nor did prior law specify the HSEE district coordinator's duties. Therefore, the Commission finds that section 1209 constitutes a new program or higher level of service, except that a teacher's time in administering the HSEE is not a new program or higher level of service, even if acting as the HSEE district coordinator.

HSEE test site coordination: Section 12 10 requires the superintendent to annually designate a HSEE test site coordinator for each test site from among the employees of the school district. This individual is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE.

Subdivision (b) of section 12 10 enumerates the duties of the HSEE test site coordinator, as follows:

- (1) determining site examination and test material needs;
- (2) arranging for test administration at the site;
- (3) training the test administrator(s) and test proctors as provided in the test publisher's manual (but training proctors would not be reimbursable as discussed above);
- (4) completing the Test Security Agreement and Test Security Affidavit prior to the receipt of test materials;

- (5) overseeing test security requirements, including collecting and filing all Test Security Affidavit forms from the test administrators and other site personnel involved with testing;
- (6) maintaining security over the examination and test data as required by section 12 11 (see below);
- (7) overseeing the acquisition of examinations from the school district and the distribution of examinations to the test administrator(s);
- (8) overseeing the administration of the HSEE to eligible pupils at the test site;
- (9) overseeing the collection and return of all testing materials to the HSEE district coordinator no later than the close of the school day on the school day following administration of the high school exit examination;
- (10) assisting the HSEE district coordinator and the test publisher in the resolution of any discrepancies between the number of examinations received from the HSEE district coordinator and the number of examinations collected for return to the HSEE district coordinator;
- (11) overseeing the collection of all pupil data as required to comply with sections 1204, 1205, and 1206 of the title 5 regulations;
- (12) Subdivision (b)( 12) provides: Within three working days of completion of site testing, the principal<sup>88</sup> and the [HSEE] test site coordinator shall certify to the [HSEE] district coordinator that the test site has maintained the security and integrity of the examination, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the [HSEE] in the manner and as otherwise required by the publisher.

Prior law did not require the superintendent to annually designate an HSEE test site coordinator for each test site, nor did prior law specify the coordinator's duties. Therefore, the Commission finds that section 12 10 (including subdivision (b)( 12)) constitutes a new program or higher level of service except that a teacher's time in administering the HSEE is not a new program or higher level of service, even if acting as the HSEE test site coordinator.

Test delivery: Section 12 12 requires school districts to deliver the booklets for the HSEE to the school test site no more than two working days before the test is to be administered.<sup>89</sup> Prior law did not require HSEE booklet delivery, nor specify its timing,

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<sup>88</sup> The principal's activities may or may not be reimbursable, depending on whether the principal is acting as an HSEE district or test-site coordinator or test administrator.

<sup>89</sup> Section 12 12 was non-substantively amended in May 2003 as follows:

School districts shall deliver the booklets ~~containing the English/language arts sections of~~ for the high school exit examination to the school test site no more than two working days before ~~that section the test~~ is to be administered, ~~and shall deliver the booklets containing the mathematics section of the examination to the school test~~

so the Commission finds that section 12 12 constitutes a new program or higher level of service.

In summary, the Commission finds the following title 5 HSEE administration regulations constitute new programs or higher levels of service:

- training a test administrator either by a test site or district coordinator (§§ 1200, 1210);
- accurately identifying eligible pupils who take the HSEE through the use of photo-identification, positive recognition by the test administrator, or some equivalent means of identification (§ 1203);
- maintaining a record of all pupils who participate in each test cycle of the HSEE, including the date each section was offered, the names of each pupil who took each section, the grade level of each pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken (§ 1205);
- maintaining in each pupil's permanent record and entering in it prior to the subsequent test cycle the following: the date the pupil took each section of the HSEE, and whether or not the pupil passed each section of the HSEE (§ 1206);
- designating by the district superintendent, on or before July 1 of each year, a district employee as the HSEE district coordinator, and notifying the publisher of the HSEE of the identity and contact information of that individual (§ 1209);
- designating annually by the district superintendent a HSEE test site coordinator for each test site (as defined) from among the employees of the school district who is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE (§ 12 10);
- delivering HSEE booklets to the school test site no more than two working days before the test is to be administered (§ 1212).

The Commission also finds the HSEE district coordinator's duties listed in section 1209 and the HSEE test site coordinator's duties listed in section 12 10 are new programs or higher levels of service. Although as discussed above, a teacher's time to perform these functions during the school day is not a new program or higher level of service.

**Test security/cheating (Cal. Code Regs., tit. 5, §§ 1211 & 1220.):** Section 1211 requires the HSEE test site coordinators to ensure that strict supervision is maintained over each pupil taking the HSEE while in the testing room and during breaks. Subdivision (b) of section 1211 states that access to the HSEE materials is limited to pupils taking the exam and employees responsible for administration of the exam.<sup>90</sup>

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~~site no more than two working days before that section is to be administered.~~

<sup>90</sup> The May 2003 amendment to section 12 11, subdivision (b) added, "and person's assigned by a nonpublic school to implement a pupil's IEPs."

Subdivision (c) requires all HSEE district and test site coordinators to sign the HSEE Test Security Agreement set forth in subdivision (d). The Agreement set forth in subdivision (d) requires the coordinator to take necessary precautions to safeguard all tests and test materials by limiting access to persons in the district with a responsible, professional interest in the test's security. The Agreement also requires the coordinator to keep on file the names of persons having access to exam and test materials, and who will be required to sign the HSEE Test Security Affidavit (this is set forth in subd. (g), and is separate from the Agreement). The Agreement further requires coordinators to keep the tests and test materials in a secure, locked location, limiting access to those responsible for test security, except on actual testing dates. Subdivision (e) requires HSEE test site coordinators to deliver the exams and test materials only to those actually administering the exam on the date of testing and only on execution of the HSEE Test Security Affidavit. Subdivision (f) requires persons with access to the exam (including test site coordinators, test administrators, and test proctors)<sup>91</sup> to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit. Subdivision (g) lists the content of the HSEE Test Security Affidavit,<sup>92</sup> which prohibits the following: divulging the test contents, copying any part of the test, permitting pupils to remove test materials from the test room, interfering with the independent work of any pupil taking the exam, and compromising the security of the test by any means, including those listed. The Affidavit requires keeping the test secure until it is distributed to pupils, and limiting examinee access to the test materials to the actual testing periods.

Subdivision (h) states that all HSEE district and test site coordinators are responsible for inventory control and requires use of appropriate inventory control forms to monitor and track test inventory. Subdivision (i) states that the security of the test materials delivered to the district is the sole responsibility of the district until the materials have been inventoried, accounted for, and delivered to the common or private carrier designated by the publisher. Subdivision (j) states that once materials have been delivered to the district, secure transportation within the district is the responsibility of the district.<sup>93,94</sup>

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<sup>91</sup> The May 2003 amendment to section 1211, subdivision (f) also added, “and persons assigned by a nonpublic school to implement the pupils’ IEPs. ”

<sup>92</sup> Prior to the May 2003 amendment to section 1211, subdivision (g), this section required the affidavit to be “completed by each test administrator and test proctor. ” However, the more expansive list in subdivision (f), which included the test site coordinator, was in place in May 2003 and more specifically governs who is required to sign the affidavit.

<sup>93</sup> The May 2003 amendment merely clarified section 1211, subdivision (j), and added after the phrase “within a school district” the following: “including to non-public schools, (for students placed through the IEP process), court and community schools, and home and hospital care. ”

<sup>94</sup> The May 2003 amendment also added a subdivision (k), which prohibits administration of the HSEE to a pupil in a private home except by a test administrator who signs a security affidavit. Subdivision (k) allows classroom aides to assist in the

Subdivision (a) of section 1220<sup>95</sup> of the title 5 regulations requires having the HSEE marked “invalid” and not scoring it for any pupil who is found to have cheated or assisted others in cheating, or who has compromised the security of the HSEE. Subdivision (b) requires that the district notify each eligible pupil before administration of the HSEE of the consequences of cheating in subdivision (a).

Prior law did not require security measures, including Security Agreements and Affidavits, for the HSEE. Therefore, because they are new requirements, the Commission finds the following test security regulations are new programs or higher levels of service within the meaning of article XIII B, section 6:

- for HSEE test site coordinators to ensure that strict supervision is maintained over each pupil being administered the HSEE, both while in the testing room and during any breaks (§ 12 11, subd. (a));
- limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 12 11, subd. (b));
- having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (d) of section 12 11 of the title 5 regulations (§ 1211, subd. (c)); (this Agreement is different from the Test Security Affidavit);
- abiding by the Test Security Agreement by limiting access to persons in the district with a responsible, professional interest in the test’s security. The Agreement also requires the coordinator to keep on file the names of persons having access to exam and test materials, and who are required to sign the HSEE Test Security Affidavit, and requires coordinators to keep the tests and test materials in a secure, locked location, limiting access to those responsible for test security, except on actual testing dates (§ 12 11, subd. (d)).
- for HSEE test site coordinators to deliver the exams and test materials only to those actually administering the exam on the date of testing and only on execution of the HSEE Test Security Affidavit (§ 1211, subd. (e));
- for persons with access to the HSEE (including test site coordinators and test administrators, but not proctors), to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit in subdivision (g) (§ 1211, subd. (f));
- for HSEE district and test site coordinators to control inventory and use appropriate inventory control forms to monitor and track test inventory (§ 12 11, subd. (h));

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administration of the test “under the supervision of a credentialed school district employee” provided that the aide signs a security affidavit and does not assist his or her own child. The Commission makes no finding on California Code of Regulations, title 5, section 1211, subdivision (k).

<sup>95</sup> Section 1220 was non-substantively amended in May 2003 to change the note.

- ✧ take sole responsibility for the security of the test materials delivered to the district until the materials have been inventoried, accounted for, and delivered to the common or private carrier designated by the publisher (§ 12 11, subd. (i));
- ✧ provide secure transportation within the district for test materials once they have been delivered to the district (§ 12 11, subd. (j)); and
- ✧ mark the test “invalid” and not score it for any pupil found to have cheated or assisted others in cheating, or who has compromised the security of the HSEE, and notifying each eligible pupil before administration of the HSEE of these consequences of cheating (§ 1220).

**Supplemental instruction (Ed. Code, §§ 60851, subd. (e) & 60853, subd. (a).):** These sections,<sup>96</sup> as added by the test claim legislation, provide in pertinent part:

Supplemental instruction shall be provided to any pupil who does not demonstrate sufficient progress toward passing the high school exit examination. To the extent that school districts have aligned their curriculum with the state academic content standards adopted by the State Board of Education, the curriculum for supplemental instruction shall reflect those standards and shall be designed to assist the pupils to succeed on the high school exit examination. ***Nothing in this chapter shall be construed to require the provision of supplemental services using resources that are not regularly available to a school or school district,*** including summer school instruction provided pursuant to Section 37252. In no event shall any action taken as a result of this subdivision cause or require reimbursement by the Commission on State Mandates. [Emphasis added.]

This statute requires school districts to provide supplemental instruction to pupils not making progress in passing the HSEE, but directs that it be within resources normally available to a school district.

Regularly available and supplemental remedial resources are identified in section 60853, subdivision (a), of the test claim statute as follows:

In order to prepare pupils to succeed on the exit examination, a school district shall use ***regularly available resources and any available supplemental remedial resources,*** including, but not limited to, funds available for programs established by Chapter 320 of the Statutes of 1998,<sup>97</sup> Chapter 8 11 of the Statutes of 1997,<sup>98</sup> Chapter 743 of the Statutes of 1998,<sup>99</sup> and funds available for other similar supplemental remedial programs. [Emphasis added.]

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<sup>96</sup> Section 6085 1, subdivision (e) is now section 6085 1, subdivision (f).

<sup>97</sup> After School Learning and Safe Neighborhoods Partnerships Program, Education Code section 8482 et. seq.

<sup>98</sup> Student Academic Partnership Program, Education Code section 99300 et. seq.

<sup>99</sup> This is mandatory summer school, Education Code section 37252 .5, which the Commission found to be a reimbursable mandate in the *Pupil Promotion and Retention* test claim (98-TC-19). This provision sunset on January 1, 2003.

Claimant and DOF did not comment on supplemental instruction. Prior law did not require it for pupils not making progress toward passing the HSEE.

These statutes only require providing supplemental services using resources that are regularly available to a school or school district, including summer school instruction provided pursuant to section 37252.

In *County of Los Angeles v. Commission on State Mandates*,<sup>100</sup> a case about adding a training course for public safety officers, the court held that the test claim statute had ““directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.”” Similarly, here the Legislature has required districts to reallocate existing, identified, supplemental or remedial instruction resources to prepare pupils to succeed on the HSEE.

Therefore, the Commission finds that supplemental instruction, as set forth in Education Code, sections 6085 1, subdivision (e), and 60853, subdivision (a), as added by the test claim statute, is not a new program or higher level of service.<sup>102</sup>

**Reporting data to the SPI/CDE (Ed. Code, § 60855, Cal. Code Regs., tit. 5, §§ 1207 & 1225.):** Section 60855 of the test claim legislation requires the SPI to contract for a multiyear independent evaluation of the HSEE based on information gathered in field testing and annual administrations. Subdivision (a) specifies the information gathered will include:

- (1) analysis of pupil performance, broken down by grade level, gender, race or ethnicity, and subject matter of the examination, including trends that become apparent over time;
- (2) analysis of the exit examination’s effects, if any, on college attendance, pupil retention, graduation, and dropout rates, including analysis of these effects on the population subgroups described in subdivision (b);
- (3) Analysis of whether the exit examination has or is likely to have differential effects, whether beneficial or detrimental, on population subgroups described in subdivision (b).

Subdivisions (b) through (d) of section 60855 specify other requirements of the assessment. For example, subdivision (d) requires the independent evaluator to report to the Governor, Office of the Legislative Analyst, the SPI, the SBE, the Secretary for

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<sup>100</sup> *County of Los Angeles v. Commission on State Mandates*, *supra*, 110 Cal.App.4th 1176, 1194.

<sup>101</sup> *Ibid.*

<sup>102</sup> Alternatively, if no new resources are required, the test claim statute should not result in higher costs. It merely redirects effort. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal .4th 727, 747, the court found that costs incurred in complying with the test claim legislation did not entitle claimants to reimbursement because the state already provided funds to cover the expenses. Therefore, the test claim statutes also do not impose costs mandated by the state.

Education, and the chairs of the education policy committees in the Legislature in 2000, 2002, and biennial reports by February 1 of even-numbered years following 2002.

Section 1207 of the title 5 regulations requires school districts to provide the publisher of the HSEE with the following information for each pupil tested “for purposes of the analyses required pursuant to Education Code Section 60855:”

- (1) date of birth, (2) grade level, (3) gender, (4) language fluency and home language, (5) special program participation, (6) participation in free or reduced priced meals, (7) enrolled in a school that qualifies for assistance under Title 1 of the Improving America’s School Act of 1994, (8) testing accommodations, (9) handicapping condition or disability, (10) ethnicity, (11) district mobility, (12) parent education, (13) post-high school plans.

Claimant contends that providing information, as requested by the SPI and independent evaluators, is a new program or higher level of service.

DOF commented that the information will be provided and collected as part of the testing process for the HSEE or is already provided through previously required data collections, and that costs associated with the data collections unique to the HSEE will be covered by the amount provided in the budget. Claimant disputed the adequacy of funding, which is analyzed below under issue 3.

Section 60855 does not expressly require school districts to do anything. It imposes evaluation requirements on the SPI and the entity conducting the HSEE evaluation, so the Commission finds it is not a new program or higher level of service.

However, section 1207 of the title 5 regulations does impose reporting requirements on school districts. Therefore, the Commission finds that providing HSEE data to the SPI or independent evaluators or the publisher is a new program or higher level of service. Specifically, the Commission finds that providing the following information on each pupil tested to a publisher or the SPI or an independent evaluator constitutes a new program or higher level of service:

- (1) date of birth;
- (2) grade level;
- (3) gender;
- (4) language fluency and home language;
- (5) special program participation;
- (6) participation in free or reduced priced meals;
- (7) enrolled in a school that qualifies for assistance under Title 1 of the Improving America’s School Act of 1994;
- (8) testing accommodations;
- (9) handicapping condition or disability;
- (10) ethnicity;
- (11) district mobility;
- (12) parent education; and
- (13) post-high school plans.

Section 1225, subdivision (a) requires each school district to report to the CDE the number of examinations for each test cycle.<sup>103</sup> Subdivision (b) requires the district superintendent to certify the accuracy of the information submitted to CDE, and specifies that the report be filed with the SPI within 10 working days of completion of each test cycle in the school district. Prior law did not require districts to report the number of examinations or to certify the accuracy of information submitted to CDE. Therefore, the Commission finds that section 1225 constitutes a new program or higher level of service.

Specifically, the Commission finds that reporting to the CDE the number of examinations for each test cycle within 10 working days of completion of each test cycle in the school district, and the district superintendent certifying the accuracy of this information submitted to CDE is a new program or higher level of service (§ 1225).

## Issue 2 Summary

In summary, the Commission finds the following activities are new programs or higher levels of service within the meaning of article XIII B, section 6:

- **Adequate notice:** notifying parents of *transfer* students who enroll after the first semester or quarter of the regular school term that, commencing with the 2003-2004 school year, and each school year thereafter, each pupil completing 12<sup>th</sup> grade will be required to successfully pass the HSEE. The notification shall include, at a minimum, the date of the HSEE, the requirements for passing the HSEE, and the consequences of not passing the HSEE, and that passing the HSEE is a condition of graduation (Ed. Code, § 60850, subds. (e)( 1) & (f)( 1));
- **Documentation of adequate notice:** maintaining documentation that the parent or guardian of each pupil received written notification of the HSEE. (Cal. Code Regs., tit. 5, § 1208.);
- **Determining English language skills:** determining whether English-learning pupils possess sufficient English language skills at the time of the HSEE to be assessed with the HSEE (§ 12 17.5);
- **HSEE administration:** administration of the HSEE on SPI-designated dates to all pupils in grade 10 beginning in the 2001-2002 school year, and subsequent administrations for students who do not pass until each section of the HSEE has been passed, and administration of the HSEE on SPI-designated dates to pupils in grade 9 only in the 2000-2001 school year who wish to take the HSEE (Ed. Code, § 6085 1, subd. (a).), except a teacher's time administering the HSEE is not a new program or higher level of service. Administration is limited to the following activities specified in the regulations:
  - training a test administrator either by a test site or district coordinator as provided in the test publisher's manual. (§§ 1200, subd. (g) & 12 10, subd. (b)(3));

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<sup>103</sup> Section 1225 was non-substantively amended in May 2003 to change the note.

- allowing pupils to have additional time to complete the HSEE within the test security limits provided in section 12 11, but only if additional time is not specified in the pupil's IEP, and only if this activity is performed by a non-teacher certificated employee, such as a service credentialed staff. (§ 1215);
- accurately identifying eligible pupils who take the HSEE through the use of photo-identification, positive recognition by the test administrator, or some equivalent means of identification (§ 1203);
- maintaining a record of all pupils who participate in each test cycle of the HSEE, including the date each section was offered, the name and grade level of each pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken (§ 1205);
- maintaining in each pupil's permanent record and entering in it prior to the subsequent test cycle the following: the date the pupil took each section of the HSEE, and whether or not the pupil passed each section of the HSEE (§ 1206);
- designation by the district superintendent, on or before July 1 of each year, of a district employee as the HSEE district coordinator, and notifying the publisher of the HSEE of the identity and contact information of that individual (§ 1209);
- for the district coordinator and superintendent, within seven days of completion of the district testing, to certify to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher (§ 1209); and
- designation annually by the district superintendent a HSEE test site coordinator for each test site (as defined) from among the employees of the school district who is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE (§ 1210).
- Also, the HSEE district coordinator's duties<sup>104</sup> listed in section 1209 and the HSEE test site coordinator's duties<sup>105</sup> listed in section 12 IO (except for a teacher's time in administering the HSEE during the school day); and

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<sup>104</sup> These duties are: (1) responding to inquiries of the publisher, (2) determining district and school HSEE test material needs, (3) overseeing acquisition and distribution of the HSEE, (4) maintaining security over the HSEE using the procedures in section 1211, (5) overseeing administration of the HSEE, (6) overseeing collection and return of test material and test data to the publisher, (7) assisting the publisher in resolving discrepancies in the test information and materials, (8) ensuring all exams and materials are received from school test sites no later than the close of the school day on the





examinations for each test cycle within 10 working days of completion of each test cycle in the school district, and for the district superintendent to certify the accuracy of this information submitted to CDE (§ 1225) are new programs or higher levels of service.

The Commission also finds that all other test claim legislation is either not subject to article XIII B, section 6, or not a new program or higher level of service.

**Issue 3: Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?**

In order for the activities listed above to impose a reimbursable, state mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state.<sup>106</sup> Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 175 14 defines “costs mandated by the state” as follows:

. . .any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

Claimant submitted a declaration in support of the contention that the test claim legislation results in increased costs for school districts. The Superintendent of the Trinity Union High School District declared on January 24, 2001, that the Superintendent is informed and believes that prior to enactment of the test claim legislation, the Trinity Union High School District was not required to engage in the test claim activities. The claimant estimated it has incurred, or will incur, costs significantly in excess of \$200.<sup>107</sup>

**Costs mandated by the federal government:** Government Code section 17556, subdivision (c), precludes reimbursement for a local agency or school district if the test claim statute “implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate. . . .” Government Code section 175 13 defines “costs mandated by the federal government” as:

[A]ny increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. “Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where

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<sup>106</sup> *Lucia Mar Unified School Dist.*, *supra*, 44 Cal.3d 830, 835; Government Code section 175 14.

<sup>107</sup> Declaration of Bob Lowden, Superintendent, Trinity Union High School District, January 24, 200 1. The current statutory standard is \$1000 (Gov. Code, § 17564). Claimant estimated it would incur costs of more than \$1000 in its March 13, 2003 declaration submitted with the test claim amendment.

failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. “Costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

As mentioned in the background, NCLB is a federal statute that, among other things, requires statewide annual assessments. As to NCLB and its predecessor, the Improving America’s Schools Act of 1994, (“IASA”) (Pub. Law 103-82), the Commission finds that Government Code section 17556, subdivision (c) does not apply to this test claim. There is no evidence in the test claim statute, legislative history or record that the test claim statute was enacted to implement NCLB. In fact, the NCLB was enacted in 2001, *after* the HSEE enactment in 2000.

Even though NCLB requires annual assessments in math, reading, and by 2007-08, science (20 U.S.C. § 63 11 (b)(3))(A)), and assessments of English proficiency (20 U.S.C. § 63 11 (b)(7)), they are not costs mandated by the federal government because the HSEE statute required those activities first and not to implement NCLB.

IASA, which predated the HSEE, also required assessments in math and reading (former 20 U.S.C. § 63 11 (b)(3)) and also required assessments of English proficiency (former 20 U.S.C. § 6311 (b)(3)(F)(iii) & (b)(5)). As with NCLB, there is no evidence in the test claim statute, legislative history or record that the test claim statute was enacted to implement IASA.

Furthermore, neither NCLB nor IASA constitute costs mandated by the federal government because their applicable requirements are merely conditions on federal funding that neither states nor school districts are required to accept. California is not required to participate in the federal grant programs of NCLB (summarized above under background) or IASA (former 20 U.S.C. § 63 11 (a)( 1)). Therefore, even though an administration of the HSEE is used to comply with NCLB’s assessment programs, such as calculating the Academic Performance Index for state accountability purposes and Adequate Yearly Progress,<sup>108</sup> NCLB is not a federal mandate.

And finally, both NCLB (20 U.S.C. §§ 6575, 7371) and IASA (former 20 U.S.C. § 63 11 (f)) state they are not federal mandates “to direct, or control a State.. .or school’s specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction.” (20 U.S.C. § 6575.)

Therefore, the Commission finds that Government Code section 17556, subdivision (c) does not apply to this test claim because the test claim legislation does not impose costs mandated by the federal government.

**Adequacy of funding:** Government Code section 17556, subdivision (e), precludes reimbursement for a local agency or school district if:

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<sup>108</sup> < <http://www.cde.ca.gov/statetests/cahsee/background/info.html> >  
[as of February 2, 2004].

[t]he statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or **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. [Emphasis added.]

The issue is whether there is adequate additional revenue sufficient to fund the mandate. The test claim legislation includes the following:

Funding for the administration of the exit examination shall be provided for in the annual Budget Act. The Superintendent of Public Instruction shall apportion funds appropriated for this purpose to enable school districts to meet the requirements of subdivisions (a), (b), and (c). The State Board of Education shall establish the amount of funding to be apportioned per test administered, based on a review of the cost per test.<sup>109</sup>

Section 1225, subdivision (c) of the title 5 regulations states that the amount of funding to be apportioned to the district for the HSEE as follows:

The amount of funding . . . shall be equal to the product of the amount per administration established by the State Board of Education to enable school districts to meet the requirements of subdivisions (a), (b) and (c) of Education Code section 6085 1 times the number of tests administered to pupils . . . in the school district as determined by the certification of the school district superintendent pursuant to subdivision (b).

The 2003-04 state budget (Stats. 2003, ch. 157) appropriates \$18,267,000 local assistance for the HSEE (Item 6 1 10- 113-000 1, Schedule (5)), and from the federal trust fund, \$1.1 million (Item 6110-1 13-0890, Schedule (3)), and another \$1.8 million for exam workbooks (Item 6110-1 13-0890, Schedule (7)). The 2002-2003 budget (Stats. 2002, ch. 379) appropriated \$18,267,000 local assistance for the HSEE (Item 6 1 10- 113-000 1, Schedule (6)). The 2001-2002 budget (Stats. 2001, ch. 106) appropriated \$14,474,000 local assistance for the HSEE (Item 6110-1 13-0001, Schedule (6)). The 2000-2001 budget (Stats. 2000, ch. 52) appropriated \$15.4 million for local administration of the HSEE (Item 6110-1 13-0001, Schedule (f)).

The state budgets for the past three years also state that the SBE shall annually establish the amount of funding apportioned to districts, and that the amount per test shall not be valid without the approval of DOF.<sup>110</sup>

DOF argues that the activities in the test claim are fully funded in the budget. DOF's assertions, as stated above, are not supported by "documentary evidence . . . authenticated

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<sup>109</sup> Education Code section 60851, as added by Statutes 1999x, chapter 1.

<sup>110</sup> This is in the 2003-2004 state budget (in Item 6110-1 13-0001, Schedule (5), Provision 7), the 2002-2003 state budget (in (Item 611 O-1 13-000 1, Schedule (6), Provision 9) and the 200 1-2002 state budget (in Item 6 1 10- 113-000 1, Schedule (6), Provision 10).

by declarations under penalty of perjury signed by persons who are authorized and competent to do so.”<sup>111</sup> The Commission relies on the law and the record as presented.

Claimant refutes DOF’s assertion. The CDE issued the California High School Exit Examination Apportionment Forms<sup>1 12</sup> to district and county superintendents, stating that each school district will receive \$3 per pupil tested (not per subject tested) regardless of whether the pupil took one or both portions of the HSEE. Claimant argues that this amount is insufficient to cover the costs of test administration.

Supporting claimant’s position is a report analyzing the 1999-2000 state budget in which the Legislative Analyst’s Office stated that other states that have implemented high school exit exams incur costs ranging from \$5 to \$20 per student each time the exam is administered.<sup>113</sup> The record, however, is silent as to how the HSEE otherwise compares with other states’ high school exit examinations, and other states’ eligible costs.

The SBE apportions \$3 per test administration, which is approved by DOF.<sup>1 14</sup> There is a rebuttable presumption that in doing so, both the SBE and DOF officially perform their duties,<sup>115</sup> and do so correctly.<sup>116</sup> Therefore, the claimant must rebut both presumptions by showing the nonexistence of the presumed fact:<sup>117</sup> the sufficiency of HSEE funding apportioned to school districts.

Originally, claimant submitted three declarations in support of its claim, none of which could successfully rebut the presumption that \$3 per administration is sufficient to fund the HSEE. In its February 2004 comments, however, claimant submits six declarations in support of its claim. All the declarations list the activities determined to be a new program or higher level of service in the draft staff analysis, and declare costs of \$1,000 or more in excess of appropriations for performing those activities.

The first declaration, from the Calistoga Joint Unified School District, states it will incur \$1,735 performing the activities in Fiscal Year (FY) 2003-2004, but its total

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<sup>111</sup> California Code of Regulations, title 2, section 1183.02, subdivision (c)( 1).

<sup>112</sup> The 2002-2003 Apportionment Form is on the California Department of Education’s website: < <http://www.cde.ca.gov/statetests/cahsee/admin/apportionment/appinfo.pdf> > [as of February 2, 2004].

<sup>113</sup> Legislative Analyst’s Office, Report to Joint Legislative Budget Committee, analysis of the 1999-2000 Budget Bill. < [http://lao.ca.gov/analysis\\_1999/education/education\\_depts2\\_anl99.html#\\_1\\_29](http://lao.ca.gov/analysis_1999/education/education_depts2_anl99.html#_1_29) > [as of February 2, 2004].

<sup>114</sup> As required by the 2003-2004 state budget (in Item 6 110-1 13-0001, Schedule (5), Provision 7), the 2002-2003 state budget (in (Item 6 110-1 13-0001, Schedule (6), Provision 9) and the 2001-2002 state budget (in Item 6110-1 13-0001, Schedule (6), Provision 10).

<sup>1 15</sup> Evidence Code section 664.

<sup>1 16</sup> *Taxara v. Gutierrez, supra*, 114 Cal. App. 4<sup>th</sup> 945, 949.

<sup>117</sup> Evidence Code section 606.

“appropriation” will be \$13 5.<sup>118</sup> Denair Unified School District’s declaration states \$2,954 costs for FY 2003-2004, and a total appropriation of \$351 during the same period.<sup>119</sup> Similarly, the Grant Joint Union High School District declared \$18,511.27 costs for FY 2002-2003, but \$8,028 in appropriations.<sup>120</sup> The Ripon Unified School District declared \$3,286 in costs for FY 2003-2004, and \$648 in appropriations.<sup>121</sup> The Riverdale Joint Unified School District declared \$2,997 in costs for FY 2002-2003, versus \$930 in appropriations.<sup>122</sup> And the Sierra Unified School District declared \$ 3,390 in costs, in contrast to \$648 in appropriations.<sup>123</sup>

The Commission must base its findings on substantial evidence in the record.<sup>124</sup>

. . . [S]ubstantial evidence has been defined in two ways: first, as evidence of ponderable legal significance . . . reasonable in nature, credible, and of solid value [citation]; and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>125</sup>

The Commission’s finding must be supported by

. . .all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by “substantial evidence.”<sup>126</sup>

Given that the claimant’s six declarations show that school districts incur more than \$1,000 in costs in excess of their apportionments, the Commission finds that claimant has presented substantial evidence to successfully rebut the presumption of the sufficiency of

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<sup>118</sup> Declaration of Sylvia Jiminez-Martinez, Counselor and District Test Coordinator, Calistoga Joint Unified School District, February 19, 2004. Claimants’ declarations use the term “appropriation” rather than “apportionment .”

<sup>119</sup> Declaration of Edward E. Parraz, Superintendent, Denair Unified School District, February 19, 2004.

<sup>120</sup> Declaration of Uve Dahmen, Coordinator of Testing and Assessment, Grant Joint Union High School District, February 18, 2004.

<sup>121</sup> Declaration of Lisa M. Boje, Director of Curriculum and Instruction, Ripon Unified School District, February 12, 2004,

<sup>122</sup> Declaration of Brooke Campbell, Assistant Principal, Riverdale Joint Unified School District, February 19, 2004.

<sup>123</sup> Declaration of A. J. Rempel, Director of Educational Services/Special Projects, Sierra Unified School District, February 13, 2004.

<sup>124</sup> *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515; Government Code section 17559, subdivision (b).

<sup>125</sup> *Desmond v. County of Contra Costa* (1993) 21 Cal. App. 4<sup>th</sup> 330, 335.

<sup>126</sup> *Ibid.*

the \$3 appropriation. No state agency has presented evidence to demonstrate the sufficiency of the appropriation or to rebut claimant's evidence.

Based on the administrative record, the Commission finds that the HSEE funding apportioned to school districts is not sufficient to cover the costs of HSEE administration. Any HSEE apportionments to school districts would be considered as offsets during the parameters and guidelines phase.

Therefore, the Commission finds that Government Code section 17556, subdivision (e) does not apply to the HSEE statutes because the statutes do not provide for offsetting savings to school districts that result in no net costs, nor do they include additional revenue specifically intended to fund the costs of the mandate in a sufficient amount.

In summary, the Commission finds that the test claim legislation imposes costs mandated by the state within the meaning of Government Code sections 17514 and 17556.

## CONCLUSION

The Commission finds that the test claim legislation imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for school districts to perform the following activities:

- ⌘ **Adequate notice:** notifying parents of *transfer* students who enroll after the first semester or quarter of the regular school term that, commencing with the 2003-04 school year, and each school year thereafter, each pupil completing 12<sup>th</sup> grade will be required to successfully pass the HSEE. The notification shall include, at a minimum, the date of the HSEE, the requirements for passing the HSEE, and the consequences of not passing the HSEE, and that passing the HSEE is a condition of graduation (Ed. Code, § 60850, subs. (e)(1) & (f)(1).);
- ⌘ **Documentation of adequate notice:** maintaining documentation that the parent or guardian of each pupil received written notification of the HSEE (Cal. Code Regs., tit. 5, § 1208.);
- ⌘ **Determining English language skills:** determining whether English-learning pupils possess sufficient English language skills at the time of the HSEE to be assessed with the HSEE (§ 1217.5);
- ⌘ **HSEE administration:** administration of the HSEE on SPI-designated dates to all pupils in grade 10 beginning in the 2001-2002 school year, and subsequent administrations for students who do not pass until each section of the HSEE has been passed, and administration of the HSEE on SPI-designated dates to pupils in grade 9 only in the 2000-2001 school year who wish to take the HSEE (Ed. Code, § 60851, subd. (a).), except a teacher's time administering the HSEE is not a mandate. Administration is limited to the following activities specified in the regulations:
  - ⌘ training a test administrator either by a test site or district coordinator as provided in the test publisher's manual. (§§ 1200, subd. (g) & 1210, subd. (b)(3));

- ⌘ allowing pupils to have additional time to complete the HSEE within the test security limits provided in section 12 11, but only if additional time is not specified in the pupil's IEP, and only if this activity is performed by a non-teacher certificated employee, such as an employee holding a service credential. (§ 1215);
- accurately identifying eligible pupils who take the HSEE through the use of photo-identification, positive recognition by the test administrator, or some equivalent means of identification (§ 1203);
- ⌘ maintaining a record of all pupils who participate in each test cycle of the HSEE, including the date each section was offered, the name and grade level of each pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken (§ 1205);
- ⌘ maintaining in each pupil's permanent record and entering in it prior to the subsequent test cycle the following: the date the pupil took each section of the HSEE, and whether or not the pupil passed each section of the HSEE (§ 1206);
- ⌘ designation by the district superintendent, on or before July 1 of each year, of a district employee as the HSEE district coordinator, and notifying the publisher of the HSEE of the identity and contact information of that individual (§ 1209);
- ⌘ for the district coordinator and superintendent, within seven days of completion of the district testing, to certify to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher (§ 1209); and
- ⌘ designation annually by the district superintendent a HSEE test site coordinator for each test site (as defined) from among the employees of the school district who is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE (§ 1210).
- ⌘ Also, the HSEE district coordinator's duties<sup>127</sup> listed in section 1209 and the HSEE test site coordinator's duties<sup>128</sup> listed in section 12 10 (except for a teacher's time in administering the HSEE during the school day); and

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<sup>127</sup> These duties are: (1) responding to inquiries of the publisher, (2) determining district and school HSEE test material needs, (3) overseeing acquisition and distribution of the HSEE, (4) maintaining security over the HSEE using the procedures in section 1211, (5) overseeing administration of the HSEE, (6) overseeing collection and return of test material and test data to the publisher, (7) assisting the publisher in resolving discrepancies in the test information and materials, (8) ensuring all exams and materials are received from school test sites no later than the close of the school day on the





examinations for each test cycle within 10 working days of completion of each test cycle in the school district, and for the district superintendent to certify the accuracy of this information submitted to CDE (§ 1225).

The Commission finds that all other statutes and regulations in the test claim not expressly mentioned above are not reimbursable state-mandated programs within the meaning of article XIII B, section 6, and Government Code section 175 14.

**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 958 14.

March 26, 2004, I served the:

**Adopted Statement of Decision**

*High School Exit Examination, 00-TC-06*

Trinity Union High School District, Claimant

Education Code Sections 60850, 60851, 60853, 60855

Statutes 1999x, Chapter 1; Statutes 1999, Chapter 135

California Code of Regulations, Title 5, Sections 1200 - 1225

by placing a true copy thereof in an envelope addressed to:

Mr. David E. Scribner  
Schools Mandate Group  
One Capitol Mall, Suite 200  
Sacramento CA 95814

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 March 26, 2004, at Sacramento, California.

  
VICTORIA SORIANO

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES ON:  
Education Code Sections 60850, 60851, 60853,  
60855; Statutes 1999x, Chapter 1; Statutes 1999,  
Chapter 135; California Code of Regulations, Title 5,  
Sections 1200 – 1225 in effect March 2003.  
  
Filed on January 25, 2001,  
  
By Trinity Union High School District, Claimant

No. 00-TC-06

***High School Exit Examination***

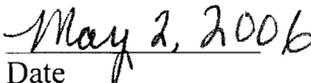
ADOPTION OF PARAMETERS AND  
GUIDELINES PURSUANT TO  
GOVERNMENT CODE SECTION  
17557 AND TITLE 2, CALIFORNIA  
CODE OF REGULATIONS, SECTION  
1183.14

*(Adopted on April 26, 2006)*

**PARAMETERS AND GUIDELINES**

On April 26, 2006, the Commission on State Mandates adopted the attached Parameters and Guidelines.

  
\_\_\_\_\_  
PAULA HIGASHI, Executive Director

  
\_\_\_\_\_  
Date

## PARAMETERS AND GUIDELINES

Education Code Sections 60850, 60851, 60853, and 60855

Statutes of 1999x, Chapter 1

Statutes of 1999, Chapter 135

California Code of Regulations, Title 5, Sections 1200-1225

(regulations effective July 20, 2001 [Register 01, No. 25],

regulations effective May 1, 2003 [Register 03, No. 18])

*High School Exit Examination* (00-TC-06)

Trinity Union High School District, Claimant

### I. SUMMARY OF THE MANDATE

On March 25, 2004, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *High School Exit Examination* (00-TC-06) program. The Commission found that Education Code sections 60850, 60851, 60853, and 60855 as added in 1999 along with California Code of Regulations, Title 5, sections 1200-1225 that became effective in 2001 and 2003 constitute a new program or higher level of service and impose a reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514. The regulations were amended in May 2004 and August 2005 to add additional activities which were not included in the test claim decision and are not reimbursable under these parameters and guidelines. The Commission approved this test claim for the following reimbursable activities:

**Adequate notice:** notifying parents of *transfer* students who enroll after the first semester or quarter of the regular school term that, commencing with the 2003-04 school year, and each school year thereafter, each pupil completing 12<sup>th</sup> grade will be required to successfully pass the High School Exit Exam (HSEE).

**Documentation of adequate notice:** maintaining documentation that the parent or guardian of each pupil received written notification of the HSEE.

**Determining English language skills:** determining whether English-learning pupils possess sufficient English language skills at the time of the HSEE to be assessed with the HSEE.

**HSEE administration:** administration of the HSEE, on designated dates to specified pupils, excluding a teacher's time administering the HSEE.

**Test security/cheating:** maintaining test security.

**Reporting data to the Superintendent of Public Instruction (SPI):** providing specific HSEE data on each pupil to the SPI or independent evaluators or the publisher.

The Commission denied any remaining alleged costs or activities, as identified on Attachment A, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

## II. ELIGIBLE CLAIMANTS

Any “school district” as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a direct result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. Charter schools are not eligible claimants.

## III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on January 25, 2001. Therefore, the costs incurred for compliance with Statutes of 1999x, Chapter 1 and Statutes of 1999, Chapter 135 are eligible for reimbursement on or after July 1, 2000.

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 Government Code section 17561, subdivision (d)(2), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

## IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for the reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

- A. **Adequate notice:** Notifying parents of *transfer* students who enroll after the first semester or quarter of the regular school term that, commencing with the 2003-04 school year, and each school year thereafter, each pupil completing 12<sup>th</sup> grade will be required to successfully pass the HSEE. The notification shall include, at a minimum, the date of the

HSEE, the requirements for passing the HSEE, the consequences of not passing the HSEE, and that passing the HSEE is a condition of graduation (Ed. Code, § 60850, subds. (e)(1) & (f)(1)). Reimbursement is provided for notices delivered by the student or by U.S. Mail.

- B. Documentation of adequate notice:** Maintaining documentation that the parent or guardian of each pupil received written notification of the HSEE. (Cal. Code Regs., tit. 5, § 1208.) Documentation may include a written copy of the notice or a record of mailing the notice.
- C. Determining English language skills:** Determining whether English-learning pupils<sup>1</sup> possess sufficient English language skills at the time of the HSEE to be assessed<sup>2</sup> with the HSEE (Cal. Code Regs., tit. 5, § 1217.)
- D. HSEE administration:** Administration of the HSEE on SPI designated dates to all pupils in grade 10 beginning in the 2001-2002 school year, and subsequent administrations for students who do not pass until each section of the HSEE has been passed, and administration of the HSEE on SPI designated dates to pupils in grade 9 only in the 2000-2001 school year who wish to take the HSEE (Ed. Code, § 60851, subd. (a)).

A teacher's time administering the HSEE during the school day is not reimbursable for any of the following activities. Administration is limited to the following activities specified in the regulations:

1. Training a test examiner either by a test site or district coordinator as provided in the test publisher's manual (Cal. Code Regs., tit. 5, §§ 1200, subd. (g) and 1210, subd. (c)(3)).
2. Allowing pupils to have additional time to complete the HSEE within the test security limits provided in section 1211, but only if additional time is not specified in the pupil's Individual Education Program (IEP) (§ 1215, subd. (a)(1)).
3. Accurately identifying eligible pupils who take the HSEE by school personnel at the test site through the use of photo-identification, positive recognition by the test examiner, or some equivalent means of identification. (Cal. Code Regs., tit. 5, § 1203.)
4. Maintaining a record of all pupils who participate in each test cycle of the HSEE, including the date each section was offered, the name and grade level of each pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken. (Cal. Code Regs., tit. 5, § 1205.)
5. Maintaining in each pupil's permanent record and entering in it prior to the subsequent test cycle the following: the date the pupil took each section of the HSEE and whether or not the pupil passed each section of the HSEE. (Cal. Code Regs., tit. 5, § 1206.)
6. Designation by the district superintendent, on or before July 1 of each year, of a district employee as the HSEE district coordinator, and notifying the publisher of

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<sup>1</sup> As defined in Education Code section 435, subdivision (a).

<sup>2</sup> Criteria are identified in Education Code section 313.

the HSEE of the identity and contact information of that individual. (Cal. Code Regs., tit. 5, § 1209.)

7. For the district coordinator and superintendent, within seven days of completion of the district testing, to certify to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher. (Cal. Code Regs., tit. 5, § 1209.)
8. Designation annually by the district superintendent a HSEE test site coordinator for each test site (as defined) from among the employees of the school district who is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE. (Cal. Code Regs., tit. 5, § 1210.)
9. The HSEE district coordinator's duties listed in section 1209 and referenced below.

District Coordinator duties are: (1) responding to inquiries of the publisher, (2) determining district and school HSEE test material needs, (3) overseeing acquisition and distribution of the HSEE, (4) maintaining security over the HSEE using the procedures in section 1211, (5) overseeing administration of the HSEE in accordance with the manuals or other instructions provided by the test publisher for administering and returning the test, (6) overseeing collection and return of test material and test data to the publisher, (7) assisting the publisher in resolving discrepancies in the test information and materials, (8) ensuring all exams and materials are received from school test sites no later than the close of the school day on the school day following administration of the HSEE, (9) ensuring all exams and materials received from school test sites have been placed in a secure district location by the end of the day following administration of those tests, (10) ensuring that all exams and materials are inventoried, packaged, and labeled in accordance with instructions from the publisher and ensuring the materials are ready for pick-up by the publisher no more than five working days following administration of either section in the district, (11) ensuring that the HSEE and test materials are retained in a secure, locked location in the unopened boxes in which they were received from the publisher from the time they are received in the district until the time of delivery to the test sites; (12) within seven days of completion of the district testing, certifying with the Superintendent to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

10. The HSEE test site coordinator's duties listed in section 1210 and referenced below. This individual is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE.

Test site coordinator's duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test examiner(s) as provided in the test publisher's manual; (4) completing the Test

Security Agreement and Test Security Affidavit prior to the receipt of test materials; (5) overseeing test security requirements, including collecting and filing all Test Security Affidavit forms from the test examiners and other site personnel involved with testing; (6) maintaining security over the examination and test data as required by section 1211; (7) overseeing the acquisition of examinations from the school district and the distribution of examinations to the test examiner(s); (8) overseeing the administration of the HSEE to eligible pupils at the test site; (9) overseeing the collection and return of all testing materials to the HSEE district coordinator no later than the close of the school day on the school day following administration of the high school exit examination; (10) assisting the HSEE district coordinator and the test publisher in the resolution of any discrepancies between the number of examinations received from the HSEE district coordinator and the number of examinations collected for return to the HSEE district coordinator; (11) overseeing the collection of all pupil data as required to comply with sections 1205, 1206 and 1207 of the title 5 regulations; (12) within three (3) working days of completion of site testing, certifying with the principal to the HSEE district coordinator that the test site has maintained the security and integrity of the examination, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner and as otherwise required by the publisher. The principal's activities may or may not be reimbursable, depending on whether the principal is acting as an HSEE district or test-site coordinator or test examiner.

11. Delivery of HSEE booklets to the school test site no more than two working days before the test is to be administered. (Cal. Code Regs., tit. 5, § 1212.) **This activity was repealed on May 19, 2004, therefore this activity is not reimbursable after May 18, 2004.**

**E. Test security/cheating:** Doing the following to maintain security:

1. For HSEE test site coordinators to ensure that strict supervision is maintained over each pupil being administered the HSEE, both while in the testing room and during any breaks (§ 1210, subd. (c)(7)(B)).
2. Limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (a)).
3. Having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (b) of section 1211.5 of the title 5 regulations. (Cal. Code Regs., tit. 5, § 1210, subd. (c)(5).)
4. Abiding by the Test Security Agreement by limiting access to persons in the district with a responsible, professional interest in the test's security. The Agreement also requires the coordinator to keep on file the names of persons having access to exam and test materials, and who are required to sign the HSEE Test Security Affidavit, and requires coordinators to keep the tests and test materials in a secure, locked location, limiting access to those responsible for test security, except on actual testing dates. (Cal. Code Regs., tit. 5, § 1210 (c)(5), § 1211, subd. (a), § 1211.5 (b)(4).)

5. HSEE test site coordinators deliver the exams and test materials only to those actually administering the exam on the date of testing and only on execution of the HSEE Test Security Affidavit (Cal. Code Regs., tit. 5, § 1210, subd. (c)(7)(A)).
6. For persons with access to the HSEE (including test site coordinators and testexaminers) to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit set forth in subdivision (g). (Cal. Code Regs., tit. 5, § 1211.5, subd. (c).)
7. HSEE district and test site coordinators control of inventory and use of appropriate inventory control forms to monitor and track test inventory. (Cal. Code Regs., tit. 5, § 1211 subd. (b).)
8. Being responsible for the security of the test materials delivered to the district until the materials have been inventoried, accounted for, and delivered to the common or private carrier designated by the publisher. (Cal. Code Regs., tit. 5, § 1211, subd. (c).)
9. Providing secure transportation within the district for test materials once they have been delivered to the district. (Cal. Code Regs., tit. 5, § 1211, subd. (d).)
10. Not scoring the test for any pupil found to have cheated or assisted others in cheating, or who has compromised the security of the HSEE, and notifying each eligible pupil before administration of the HSEE of these consequences of cheating. (Cal. Code Regs., tit. 5, § 1220.)

**F. Reporting data to the SPI:** Providing HSEE data to the SPI or independent evaluators or the publisher is reimbursable. Specifically, providing the following information on each pupil tested: (1) date of birth, (2) grade level, (3) gender, (4) language fluency and home language, (5) special program participation, (6) participation in free or reduced priced meals, (7) enrolled in a school that qualifies for assistance under Title 1 of the Improving America's School Act of 1994, (8) testing accommodations, (9) handicapping condition or disability, (10) ethnicity, (11) district mobility, (12) parent education, (13) post-high school plans. (§ 1207); and reporting to the CDE the number of examinations for each test cycle within 10 working days of completion of each test cycle in the school district, and for the district superintendent to certify the accuracy of this information submitted to CDE (§ 1207).

The regulation (§1207) was amended in May 2004 and August 2005 to add the following data that must be submitted to the state (which are not reimbursable under these parameters and guidelines): (1) pupil's full name; (2) date of English proficiency reclassification; (3) if R-FEP pupil scored proficient or above on the California English-Language Arts Standards Test three (3) times since reclassification; (4) use of modifications during the exam [accommodations are reimbursed]; (5) participation in California Alternate Performance Assessment (CAPA); (6) school and district CBEDS enrollment; (7) district and county of residence for students with disabilities; (8) California School Information Services (CSIS) Student Number, once assigned.

## V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursable claim must be filed in a timely manner.

### A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

#### 1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

#### 2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

#### 3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

#### 4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

#### 5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

#### 6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each

employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

#### B. Indirect Cost Rates

Indirect costs are costs 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 to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

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. RECORD RETENTION**

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter<sup>3</sup> is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documentation used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

### **VII. OFFSETTING SAVINGS AND REIMBURSEMENTS**

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including, but not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

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<sup>3</sup> This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Reimbursement shall be offset by funding provided in the State Budget for the HSEE Program.

### **VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS**

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the claiming instructions shall constitute notice of the right of local agencies and schools districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

### **IX. REMEDIES BEFORE THE COMMISSION**

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

### **X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES**

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

## ATTACHMENT A

The Commission found that the following activities are not reimbursable. (See Statement of Decision adopted on March 25, 2004.)

1. Duties of the Superintendent of Public Instruction (Ed. Code, § 60850, subs. (a), (b), (d), (e)(2), (e)(3), (e)(4), & (h)).
2. Field testing of the HSEE (Ed. Code, § 60850, subd. (c)).
3. Providing HSEE results to all pupils.
4. Administering the HSEE to adult students.
5. Restructuring academic offerings (Ed. Code, § 60853, subs. (b)(c)).
6. Using test proctors to administer the HSEE (Cal. Code Regs, tit.5, § 1200, subd. (i)).
7. Permissive accommodations (Cal. Code Regs., tit., 5, §§ 1216, subd. (d), 1218 & 1219).
8. Federally mandated accommodations (Cal. Code Regs, tit. 5, §§ 1215.5 & 1216; Ed. Code, § 60850, subd (g).)
9. A teacher's time in administering the examination.
10. Supplemental instruction (Ed. Code, §§ 60851, subd. (f) & 60853, subd. (a)).
11. Evaluations of the HSEE by the SPI (Ed. Code, § 60855).



**BETTY T. YEE**  
California State Controller

**RECEIVED**  
August 31, 2018  
**Commission on  
State Mandates**

August 31, 2018

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

**SUBJECT: Notice of Complete Mandate Redetermination Request, Schedule for  
Comments, and Notice of Tentative Hearing Date**

Mandate Redetermination Request, 17-MR-01  
*High School Exit Examination (00-TC-06)*  
Education Code Sections 60850, 60851, 60853, and 60855; Statutes 1999x,  
Chapter 1 and Statutes 1999, Chapter 135; California Code of Regulations, Title 5,  
Sections 1200-1225 (regulations effective July 20, 2001 [Register 01, No. 25] and  
regulations effective May 1, 2003 [Register 03, No. 18]); as alleged to be modified  
by Statutes 2015, Chapter 572 (SB 172); and Statutes 2017, Chapter 641 (AB 830)  
Department of Finance, Requester

Dear Ms. Halsey:

The State Controller's Office (SCO) reviewed and concurs with the Department of Finance's request to adopt a new test claim decision to supersede the prior decision on the High School Exit Examination mandate program based upon the suspension and repeal of the authorizing statute.

If you have any questions, please contact Everett Luc, Fiscal Analyst of the Local Reimbursements Section in the Local Government Programs and Services Division, at [ELuc@sco.ca.gov](mailto:ELuc@sco.ca.gov) or (916) 323-0766.

Sincerely,

ANITA DAGAN, Manager  
Local Reimbursements Section

**DECLARATION OF SERVICE BY EMAIL**

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.

On August 31, 2018, I served the:

- **State Controller's Office's (Controller's) Comments on the Mandate Redetermination filed August 31, 2018**

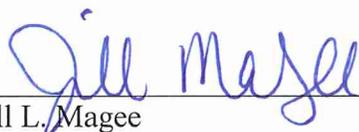
Mandate Redetermination Request, 17-MR-01

*High School Exit Examination (00-TC-06)*

Education Code Sections 60850, 60851, 60853, and 60855; Statutes 1999x, Chapter 1 and Statutes 1999, Chapter 132; California Code of Regulations, Title 5, Sections 1200-1225 (regulations effective July 20, 2001 [Register 01, No. 25] and regulations effective May 1, 2003 [Register 03, No. 18]); as alleged to be modified by Statutes 2015, Chapter 572 (SB 172); and Statutes 2017, Chapter 641 (AB 830)  
Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 31, 2018 at Sacramento, California.



Jill L. Magee  
Commission on State Mandates  
980 Ninth Street, Suite 300  
Sacramento, CA 95814  
(916) 323-3562

# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 8/31/18

**Claim Number:** 17-MR-01

**Matter:** High School Exit Examination (00-TC-06)

**Requester:** Department of Finance

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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April 30, 2019

Mr. Ed Hanson  
Department of Finance  
915 L Street, 7th Floor  
Sacramento, CA 95814

*And Parties, Interested Parties, and Interested Persons (See Mailing List)*

**Re: Draft Proposed Decision, Schedule for Comments, and Notice of Hearing**

Mandate Redetermination Request, 17-MR-01

*High School Exit Examination (00-TC-06)*

Education Code Sections 60850, 60851, 60853, and 60855; Statutes 1999x, Chapter 1 and Statutes 1999, Chapter 135; California Code of Regulations, Title 5, Sections 1200-1225 (regulations effective July 20, 2001 [Register 01, No. 25] and regulations effective May 1, 2003 [Register 03, No. 18]); as alleged to be modified by Statutes 2015, Chapter 572 (SB 172); and Statutes 2017, Chapter 641 (AB 830)  
Department of Finance, Requester

Dear Mr. Hanson:

The Draft Proposed Decision for the above-captioned matter is enclosed for your review and comment.

**Written Comments**

Written comments may be filed on the Draft Proposed Decision by **May 21, 2019**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.<sup>1</sup>

You are advised that comments filed with the Commission on State Mandates (Commission) are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Refer to [http://www.csm.ca.gov/dropbox\\_procedures.php](http://www.csm.ca.gov/dropbox_procedures.php) on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

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<sup>1</sup> Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Mr. Hanson  
April 30, 2019  
Page 2

### Hearing

This matter is set for hearing on **Friday, July 26, 2019** at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision will be issued on or about July 12, 2019.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. Staff will no longer send reminder emails because the Commission does not have the resources to contact each party and interested party. Therefore, the last communication from Commission staff is the Proposed Decision which will be issued approximately two weeks prior to the hearing and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey  
Executive Director

**ITEM \_\_\_\_**  
**MANDATE REDETERMINATION**  
**FIRST HEARING: ADEQUATE SHOWING**  
**DRAFT PROPOSED DECISION**

Education Code Sections 60850 and 60851  
Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539)  
California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1208, 1209, 1210,  
1211, 1211.5, 1212, 1215, 1217, and 1220, Register 01, No. 25, effective July 20, 2001 and  
Register 03, No. 18, effective May 1, 2003<sup>1</sup>

*High School Exit Examination (00-TC-06)*

As Alleged to be Modified by:

Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

17-MR-01

Department of Finance, Requester

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**EXECUTIVE SUMMARY**

**Overview**

On March 25, 2004, the Commission on State Mandates (Commission) adopted the Test Claim Decision finding that Education Code sections 60850 and 60851, as added by Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539), and Regulations, title 5, sections 1200, 1203, 1205, 1206, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220, as added by Register 01, No. 25, effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003 which implement the Education Code sections, impose a reimbursable state-mandated new program on school districts within the meaning of article XIII B, section 6 of the California

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<sup>1</sup> The captions for the Test Claim Decision and Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 included Education Code sections 60853 and 60855 and Sections 1200-1225 of the regulations. However, sections 60853 and 60855 were denied by the Commission as not imposing any state-mandated duties on school districts and thus should not have been included in the caption for the Parameters and Guidelines. (Exhibit B, Test Claim Statement of Decision, pages 12, 15, 32.) In addition, the Parameters and Guidelines identify only the following regulations as imposing reimbursable state-mandated activities: California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220. (Exhibit B, Test Claim Statement of Decision, pages 43-47; Exhibit C, Parameters and Guidelines, pages 3-7.)

Constitution and Government Code section 17514.<sup>2</sup> The Commission approved the Test Claim for the following reimbursable activities:

- Providing adequate notice to parents of transfer students informing them of the High School Exit Examination (HSEE) and its requirements. (Ed. Code, §§ 60850(e)(1) and 60850(f)(1).)
- Maintaining documentation of adequate written notice regarding the HSEE to the parent or guardian of each pupil. (Cal. Code Regs., tit. 5, §1208.)
- Determining whether English-learning pupils possessed sufficient English language skills at the time of the HSEE to be assessed with the same. (Cal. Code Regs., tit. 5, § 1217.)
- Administration of the HSEE to all pupils in grade 10, beginning in the 2001-2002 school year. (Ed. Code, § 60851(a); Cal. Code Regs., tit. 5, §§ 1200, 1203, 1205, 1206, 1209, 1210, 1212, and 1215.)
- Maintaining security during the HSEE and preventing cheating. (Cal. Code Regs., tit. 5, §§ 1210(c), 1211(a), 1211(b), 1211(c), 1211(d), 1211.5(b), 1211.5(c), and 1220.)
- Providing HSEE data to the Superintendent of Public Instruction (SPI). (Cal. Code Regs., tit. 5, § 1207.)<sup>3</sup>

On April 26, 2006, the Parameters and Guidelines were adopted by the Commission.<sup>4</sup>

Effective January 1, 2016, Statutes 2015, chapter 572 added sections 60851.5 and 60851.6 to the Education Code. Section 60851.5 provides that “Notwithstanding Section 60851, the administration of the high school exit examination, and the requirement that each pupil completing grade 12 successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school, shall be suspended for the 2015-16, 2016-17, and 2017-18 school years.” Section 60851.6 provides that “Notwithstanding Section 60851 or any other law, the governing board or body of a local educational agency, and the department on behalf of state special schools, shall grant a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination.”

Effective January 1, 2018, Statutes 2017, chapter 641, repealed Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, commencing with section 60850 and including sections 60851, 60853, and 60855, all pertaining to the HSEE.

After the request for Mandate Redetermination was filed, California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220, as added by Register 01, No. 25 and Register 03, No. 18, which were found to impose a

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<sup>2</sup> Exhibit B, Test Claim Statement of Decision.

<sup>3</sup> Exhibit B, Test Claim Statement of Decision.

<sup>4</sup> Exhibit C, Parameters and Guidelines.

reimbursable state mandate by the Commission in *High School Exit Examination*, 00-TC-06, were repealed in accordance with the repeal of the test claim statutes.<sup>5</sup>

The Department of Finance (Finance) contends that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *High School Exit Examination*, 00-TC-06 mandate has been be modified, and is no longer required, based on Statutes 2015, chapter 572 and Statutes 2017, chapter 641, the subsequent change in law.<sup>6</sup>

### **Procedural History**

On June 28, 2018, Finance filed the Request for Mandate Redetermination.<sup>7</sup> On August 31, 2018, the State Controller (Controller) filed comments concurring with Finance’s request.<sup>8</sup> On April 30, 2019 Commission Staff issued the Draft Proposed Decision, for the first hearing.<sup>9</sup>

### **Commission Responsibilities**

Government Code section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission’s regulations state:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>10</sup>

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on

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<sup>5</sup> California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.)

<sup>6</sup> Exhibit A, Request for Mandate Redetermination, pages 5-6.

<sup>7</sup> Exhibit A, Request for Mandate Redetermination.

<sup>8</sup> Exhibit D, Controller’s Comments on the Mandate Redetermination.

<sup>9</sup> Exhibit E, Draft Proposed Decision, First Hearing.

<sup>10</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>11</sup>

An “adequate showing” is determined in the Commission’s regulations as follows:

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>12</sup>

If the Commission finds, at the first hearing, that:

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.<sup>13</sup>

Thus, the first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission’s regulations, only whether the requester has made an adequate showing that the state’s liability may be modified based on a subsequent change in law, as defined. Therefore, this analysis will be limited to whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”<sup>14</sup> If the Commission finds that there has been an adequate showing, a thorough mandates analysis to determine whether and to what extent the state’s liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

### **Staff Analysis**

Staff finds that Finance has made an adequate showing that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *High School Exit Examination*, 00-TC-06 mandate may be modified based on a subsequent change in law, such that Finance has a substantial probability of prevailing at the second hearing.

Specifically, Statutes 2015, chapter 572, section 2 suspended administration of the high school exit examination (HSEE, or CAHSEE) for the 2015-2016, 2016-2017, and 2017-2018 school years, and also suspended the requirement that each pupil completing grade 12 in said years successfully pass the high school exit examination in order to receive a diploma of graduation or

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<sup>11</sup> Government Code section 17570(a)(2).

<sup>12</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>13</sup> California Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

<sup>14</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

to graduate from high school. Statutes 2017, chapter 641, section 16, effective January 1, 2018, then expressly repealed the statutes that impose the mandate.

Pursuant to Government Code section 17570(d)(4), staff recommends that the Commission hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted Test Claim Decision.

**Staff Recommendation**

Staff recommends that the Commission adopt the Proposed Decision and, pursuant to Government Code sections 17570(b) and 17570(d)(4), direct staff to notice the second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted Test Claim Decision. If the Commission adopts the attached Proposed Decision, the second hearing for this matter will be set for September 27, 2019.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed decision following the hearing.

COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:  
FIRST HEARING: ADEQUATE  
SHOWING ON:

Education Code Sections 60850, 60851, Statutes of 1999x, Chapter 1 (SB 2) and Statutes of 1999, Chapter 135 (AB 2539) California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220, Register 01, No. 25, effective July 20, 2001 and, Register 03, No. 18, effective May 1, 2003<sup>15</sup>

As Alleged to be Modified by:

Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

Filed on June 28, 2018

By the Department of Finance, Requester

Case No.: 17-MR-01

*High School Exit Examination (00-TC-06)*

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

*(Adopted July 26, 2019)*

**DECISION**

The Commission on State Mandates (Commission) heard and decided this Mandate Redetermination during a regularly scheduled hearing on July 26, 2019. [Witness list will be included in the adopted Decision.]

Government Code section 17570 and section 1190.1 et seq. of the Commission's regulations establish the mandate redetermination process. In addition, the laws applicable to the Commission's determination of a reimbursable state-mandated program are article XIII B,

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<sup>15</sup> The captions for the Test Claim Decision and Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 included Education Code sections 60853 and 60855 and Sections 1200-1225 of the regulations. However, sections 60853 and 60855 were denied by the Commission as not imposing any state-mandated duties on school districts and thus should not have been included in the caption for the Parameters and Guidelines. (Exhibit B, Test Claim Statement of Decision, pages 12, 15, 32.) In addition, the Parameters and Guidelines identify only the following regulations as imposing reimbursable state-mandated activities: California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220. (Exhibit B, Test Claim Statement of Decision, pages 43-47; Exhibit C, Parameters and Guidelines, pages 3-7.)

section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181.1 et seq., and related case law.

The Commission adopted the Proposed Decision at the hearing by a vote of [vote will be included in the adopted Decision], and [directed/did not direct] staff to notice a second hearing to determine whether to adopt a new Test Claim Decision to supersede the previously adopted Test Claim Decision as follows:

<b>Member</b>	<b>Vote</b>
Lee Adams, County Supervisor	
Keely Bosler, Director of the Department of Finance, Chairperson	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Yvette Stowers, Representative of the State Controller, Vice Chairperson	

**Summary of the Findings**

The Commission finds that the Department of Finance (Finance) has made an adequate showing that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *High School Exit Examination*, 00-TC-06 mandate may be modified based on a subsequent change in law, such that Finance has a substantial probability of prevailing at the second hearing. Specifically, Statutes 2015, chapter 572, section 2 suspended administration of the high school exit examination (HSEE, or CAHSEE) for the 2015-2016, 2016-2017, and 2017-2018 school years, and also suspended the requirement that each pupil completing grade 12 in said years successfully pass the high school exit examination in order to receive a diploma of graduation or to graduate from high school. Statutes 2017, chapter 641, section 16, effective January 1, 2018, then expressly repealed the statutes that impose the mandate. Pursuant to Government Code section 17570(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted Test Claim Decision.

**COMMISSION FINDINGS**

**I. Chronology**

- 03/25/2004            The Commission adopted the Test Claim Decision.<sup>16</sup>
- 04/26/2006            The Commission adopted the Parameters and Guidelines.<sup>17</sup>

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<sup>16</sup> Exhibit B, Test Claim Statement of Decision.

<sup>17</sup> Exhibit C, Parameters and Guidelines.

- 06/28/2018 Finance filed the Request for Mandate Redetermination.<sup>18</sup>
- 08/31/2018 The State Controller’s Office (Controller) filed comments on the Mandate Redetermination.<sup>19</sup>
- 04/30/2019 Commission staff issued the Draft Proposed Decision, First Hearing.<sup>20</sup>

**II. Background**

On March 25, 2004, the Commission adopted the Test Claim Statement of Decision in *High School Exit Examination*, 00-TC-06, finding that Education Code sections 60850 and 60851, Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539), and Regulations, title 5, sections 1200, 1203, 1205, 1206, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220, as added by Register 01, No. 25 and Register 03, No. 18, which implement the Education Code sections, impose a reimbursable state-mandated new program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. On April 26, 2006, the Commission adopted the Parameters and Guidelines approving reimbursement for the following reimbursable activities:

- A. Adequate notice:** Notifying parents of *transfer* students who enroll after the first semester or quarter of the regular school term that, commencing with the 2003-04 school year, and each school year thereafter, each pupil completing 12<sup>th</sup> grade will be required to successfully pass the HSEE. The notification shall include, at a minimum, the date of the HSEE, the requirements for passing the HSEE, the consequences of not passing the HSEE, and that passing the HSEE is a condition of graduation (Ed. Code, § 60850, subs. (e)(1) & (f)(1)). Reimbursement is provided for notices delivered by the student or by U.S. Mail.
- B. Documentation of adequate notice:** Maintaining documentation that the parent or guardian of each pupil received written notification of the HSEE. (Cal. Code Regs., tit. 5, § 1208.) Documentation may include a written copy of the notice or a record of mailing the notice.
- C. Determining English language skills:** Determining whether English-learning pupils<sup>21</sup> possess sufficient English language skills at the time of the HSEE to be assessed<sup>22</sup> with the HSEE (Cal. Code Regs., tit. 5, § 1217.)
- D. HSEE administration:** Administration of the HSEE on SPI designated dates to all pupils in grade 10 beginning in the 2001-2002 school year, and subsequent administrations for students who do not pass until each section of the HSEE has been

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<sup>18</sup> Exhibit A, Request for Mandate Redetermination.

<sup>19</sup> Exhibit D, Controller’s Comments on the Request for Mandate Redetermination.

<sup>20</sup> Exhibit E, Draft Proposed Decision, First Hearing.

<sup>21</sup> As defined in Education Code section 435, subdivision (a).

<sup>22</sup> Criteria are identified in Education Code section 313.

passed, and administration of the HSEE on SPI designated dates to pupils in grade 9 only in the 2000-2001 school year who wish to take the HSEE (Ed. Code, § 60851, subd. (a)).

A teacher's time administering the HSEE during the school day is not reimbursable for any of the following activities. Administration is limited to the following activities specified in the regulations:

1. Training a test examiner either by a test site or district coordinator as provided in the test publisher's manual (Cal. Code Regs., tit. 5, §§ 1200, subd. (g) and 1210, subd. (c)(3)).
2. Allowing pupils to have additional time to complete the HSEE within the test security limits provided in section 1211, but only if additional time is not specified in the pupil's Individual Education Program (IEP) (§ 1215, subd. (a)(1)).
3. Accurately identifying eligible pupils who take the HSEE by school personnel at the test site through the use of photo-identification, positive recognition by the test examiner, or some equivalent means of identification. (Cal. Code Regs., tit. 5, § 1203.)
4. Maintaining a record of all pupils who participate in each test cycle of the HSEE, including the date each section was offered, the name and grade level of each pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken. (Cal. Code Regs., tit. 5, § 1205.)
5. Maintaining in each pupil's permanent record and entering in it prior to the subsequent test cycle the following: the date the pupil took each section of the HSEE and whether or not the pupil passed each section of the HSEE. (Cal. Code Regs., tit. 5, § 1206.)
6. Designation by the district superintendent, on or before July 1 of each year, of a district employee as the HSEE district coordinator, and notifying the publisher of the HSEE of the identity and contact information of that individual. (Cal. Code Regs., tit. 5, § 1209.)
7. For the district coordinator and superintendent, within seven days of completion of the district testing, to certify to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher. (Cal. Code Regs., tit. 5, § 1209.)
8. Designation annually by the district superintendent a HSEE test site coordinator for each test site (as defined) from among the employees of the school district who is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE. (Cal. Code Regs., tit. 5, § 1210.)
9. The HSEE district coordinator's duties listed in section 1209 and referenced below.

District Coordinator duties are: (1) responding to inquiries of the publisher, (2) determining district and school HSEE test material needs, (3) overseeing

acquisition and distribution of the HSEE, (4) maintaining security over the HSEE using the procedures in section 1211, (5) overseeing administration of the HSEE in accordance with the manuals or other instructions provided by the test publisher for administering and returning the test, (6) overseeing collection and return of test material and test data to the publisher, (7) assisting the publisher in resolving discrepancies in the test information and materials, (8) ensuring all exams and materials are received from school test sites no later than the close of the school day on the school day following administration of the HSEE, (9) ensuring all exams and materials received from school test sites have been placed in a secure district location by the end of the day following administration of those tests, (10) ensuring that all exams and materials are inventoried, packaged, and labeled in accordance with instructions from the publisher and ensuring the materials are ready for pick-up by the publisher no more than five working days following administration of either section in the district, (11) ensuring that the HSEE and test materials are retained in a secure, locked location in the unopened boxes in which they were received from the publisher from the time they are received in the district until the time of delivery to the test sites; (12) within seven days of completion of the district testing, certifying with the Superintendent to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

10. The HSEE test site coordinator's duties listed in section 1210 and referenced below. This individual is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE.

Test site coordinator's duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test examiner(s) as provided in the test publisher's manual; (4) completing the Test Security Agreement and Test Security Affidavit prior to the receipt of test materials; (5) overseeing test security requirements, including collecting and filing all Test Security Affidavit forms from the test examiners and other site personnel involved with testing; (6) maintaining security over the examination and test data as required by section 1211; (7) overseeing the acquisition of examinations from the school district and the distribution of examinations to the test examiner(s); (8) overseeing the administration of the HSEE to eligible pupils at the test site; (9) overseeing the collection and return of all testing materials to the HSEE district coordinator no later than the close of the school day on the school day following administration of the high school exit examination; (10) assisting the HSEE district coordinator and the test publisher in the resolution of any discrepancies between the number of examinations received from the HSEE district coordinator and the number of examinations collected for return to the HSEE district coordinator; (11) overseeing the collection of all pupil data as required to comply with sections 1205, 1206 and 1207 of the title 5 regulations; (12) within three (3) working days of completion of site testing, certifying with the principal to the HSEE district coordinator that the test site has maintained the

security and integrity of the examination, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner and as otherwise required by the publisher. The principal's activities may or may not be reimbursable, depending on whether the principal is acting as an HSEE district or test-site coordinator or test examiner.

11. Delivery of HSEE booklets to the school test site no more than two working days before the test is to be administered. (Cal. Code Regs., tit. 5, § 1212.) **This activity was repealed on May 19, 2004, therefore this activity is not reimbursable after May 18, 2004.**

**E. Test security/cheating:** Doing the following to maintain security:

1. For HSEE test site coordinators to ensure that strict supervision is maintained over each pupil being administered the HSEE, both while in the testing room and during any breaks (§ 1210, subd. (c)(7)(B)).
2. Limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (a)).
3. Having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (b) of section 1211.5 of the title 5 regulations. (Cal. Code Regs., tit. 5, § 1210, subd. (c)(5).)
4. Abiding by the Test Security Agreement by limiting access to persons in the district with a responsible, professional interest in the test's security. The Agreement also requires the coordinator to keep on file the names of persons having access to exam and test materials, and who are required to sign the HSEE Test Security Affidavit, and requires coordinators to keep the tests and test materials in a secure, locked location, limiting access to those responsible for test security, except on actual testing dates. (Cal. Code Regs., tit. 5, § 1210 (c)(5), § 1211, subd. (a), § 1211.5 (b)(4).)
5. HSEE test site coordinators deliver the exams and test materials only to those actually administering the exam on the date of testing and only on execution of the HSEE Test Security Affidavit (Cal. Code Regs., tit. 5, § 1210, subd. (c)(7)(A)).
6. For persons with access to the HSEE (including test site coordinators and [sic] testexaminers) to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit set forth in subdivision (g). (Cal. Code Regs., tit. 5, § 1211.5, subd. (c).)
7. HSEE district and test site coordinators control of inventory and use of appropriate inventory control forms to monitor and track test inventory. (Cal. Code Regs., tit. 5, § 1211 subd. (b).)
8. Being responsible for the security of the test materials delivered to the district until the materials have been inventoried, accounted for, and delivered to the

common or private carrier designated by the publisher. (Cal. Code Regs., tit. 5, § 1211, subd. (c).)

9. Providing secure transportation within the district for test materials once they have been delivered to the district. (Cal. Code Regs., tit. 5, § 1211, subd. (d).)
10. Not scoring the test for any pupil found to have cheated or assisted others in cheating, or who has compromised the security of the HSEE, and notifying each eligible pupil before administration of the HSEE of these consequences of cheating. (Cal. Code Regs., tit. 5, § 1220.)

**F. Reporting data to the SPI:** Providing HSEE data to the SPI or independent evaluators or the publisher is reimbursable. Specifically, providing the following information on each pupil tested: (1) date of birth, (2) grade level, (3) gender, (4) language fluency and home language, (5) special program participation, (6) participation in free or reduced priced meals, (7) enrolled in a school that qualifies for assistance under Title 1 of the Improving America’s School Act of 1994, (8) testing accommodations, (9) handicapping condition or disability, (10) ethnicity, (11) district mobility, (12) parent education, (13) post-high school plans. (§ 1207); and reporting to the CDE the number of examinations for each test cycle within 10 working days of completion of each test cycle in the school district, and for the district superintendent to certify the accuracy of this information submitted to CDE (§ 1207).

The regulation (§1207) was amended in May 2004 and August 2005 to add the following data that must be submitted to the state (which are not reimbursable under these parameters and guidelines): (1) pupil’s full name; (2) date of English proficiency reclassification; (3) if R-FEP pupil scored proficient or above on the California English-Language Arts Standards Test three (3) times since reclassification; (4) use of modifications during the exam [accommodations are reimbursed]; (5) participation in California Alternate Performance Assessment (CAPA); (6) school and district CBEDS enrollment; (7) district and county of residence for students with disabilities; (8) California School Information Services (CSIS) Student Number, once assigned.<sup>23</sup>

#### The Alleged Subsequent Change in Law

Effective January 1, 2016, Statutes 2015, chapter 572 added sections 60851.5 and 60851.6 to the Education Code. Section 60851.5 provides that “Notwithstanding Section 60851, the administration of the high school exit examination, and the requirement that each pupil completing grade 12 successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school, shall be suspended for the 2015-16, 2016-17, and 2017-18 school years.” Section 60851.6 provides that “Notwithstanding Section 60851 or any other law, the governing board or body of a local educational agency, and the department on behalf of state special schools, shall grant a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination.”

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<sup>23</sup> Exhibit C, Parameters and Guidelines.

Effective January 1, 2018, Statutes 2017, chapter 641 repealed Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, commencing with section 60850, all pertaining to the HSEE.

California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220, as added by Register 01, No. 25 and Register 03, No. 18, which were found to impose reimbursable state mandate by the Commission in *High School Exit Examination*, 00-TC-06, have been repealed in accordance with the repeal of the test claim statutes.<sup>24</sup>

#### Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process for a test claim decision to be redetermined and superseded by a new test claim decision if a subsequent change in law, as defined, has modified the state's liability for reimbursement. The redetermination process calls for a two-hearing process. At the first hearing, the requester must make "an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state's liability pursuant to Article XIII B, section 6(a) of the California Constitution."<sup>25</sup> A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a "subsequent change in law" does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A "subsequent change in law" also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>26</sup>

An "adequate showing" is determined in the Commission's regulations as follows:

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.<sup>27</sup>

If the Commission finds, at the first hearing, that:

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an

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<sup>24</sup> California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.)

<sup>25</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>26</sup> Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

<sup>27</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.<sup>28</sup>

### **III. Positions of the Parties, Interested Parties, and Interested Persons**

#### **A. Department of Finance, Requester**

Finance asserts that Statutes 2015, chapter 572, effective January 1, 2016, “suspended the administration of the [HSEE] and the requirement that students must pass the [HSEE] to graduate high school for school years 2015-16 through 2017-18, and retroactively granted high school diplomas to grade 12 students who successfully fulfilled graduation requirements but did not graduate as a result of not passing the [HSEE].”<sup>29</sup> Finance also asserts that Statutes 2017, chapter 641, effective January 1, 2018, “repealed the authorizing statutes for the [HSEE], effectively terminating the administration of the [HSEE].”<sup>30</sup>

Accordingly, Finance states that “[g]iven the suspension and repeal of the authorizing statute, any required activities pursuant to the California Code of Regulations related to the [HSEE] are unsupported by statute and should no longer be a basis for mandated activities.”<sup>31</sup> Finance concludes that “the reimbursable activities identified in the High School Exit Examination Statement of Decision (00-TC-06) cease to be eligible for reimbursements effective January 1, 2016. Therefore, based on the change in law, the state’s liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero.”<sup>32</sup>

#### **B. State Controller’s Office**

The Controller concurs with Finance’s request to adopt a new test claim decision “to supersede the prior decision on the High School Exit Examination mandate program based upon the suspension and repeal of the authorizing statute.”<sup>33</sup>

#### **C. School Districts**

No comments have been filed by any of the eligible claimant school districts or any of the school district associations that represent them.

### **IV. Discussion**

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the states liability.

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<sup>28</sup> California Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

<sup>29</sup> Exhibit A, Request for Mandate Redetermination, page 5.

<sup>30</sup> Exhibit A, Request for Mandate Redetermination, page 5.

<sup>31</sup> Exhibit A, Request for Mandate Redetermination, page 5.

<sup>32</sup> Exhibit A, Request for Mandate Redetermination, page 6.

<sup>33</sup> Exhibit D, Controller’s Comments on the Request for Mandate Redetermination.

The first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission’s regulations, only whether the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law, as defined. Therefore, the analysis will be limited to whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”<sup>34</sup> If answered in the affirmative, a thorough mandates analysis to determine whether and to what extent the state’s liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will then be prepared for the second hearing on this matter.

**A. Statutes 2015, Chapter 572 and Statutes 2017, Chapter 641 Constitute a Subsequent Change in Law, Within the Meaning of Government Code Section 17570.**

Government Code section 17570(b) states that the Commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that, pursuant to article XIII B section 6, the state’s liability has been modified based on a subsequent change in law. A subsequent change in law is defined in Government Code section 17570(a)(2) as:

A change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.<sup>35</sup>

Finance, in its request, alleges that a subsequent change in law requires a finding that there are no longer any costs mandated by the state, in that Statutes 2015, chapter 572 suspended, and Statutes 2017, chapter 641 repealed the statutory provisions that make up the mandate, and thus

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<sup>34</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21). This regulation describes the standard for the first hearing as follows:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.

<sup>35</sup> Government Code section 17570(a)(2).

all force and effect of the regulatory provisions implementing the test claim statutes has been removed.<sup>36</sup>

The Test Claim Decision found that certain provisions in sections 60850 and 60851 imposed reimbursable activities – specifically, to provide adequate notice to parents or guardians of transfer students about the HSEE and to administer the HSEE.<sup>37</sup>

The Commission finds that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, constitute a subsequent change in law within the meaning of Government Code section 17570.

Statutes 2015, chapter 572 became effective January 1, 2016, and added section 60851.5 to the Education Code to provide that “Notwithstanding Section 60851, the administration of the high school exit examination, and the requirement that each pupil completing grade 12 successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school, shall be suspended for the 2015-16, 2016-17, and 2017-18 school years.” The statute also added section 60851.6, which provides that “Notwithstanding Section 60851 or any other law, the governing board or body of a local educational agency, and the department on behalf of state special schools, shall grant a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination.”

On that same day, the California Department of Education sent a letter to all county and district school superintendents, and copied the letter to “CAHSEE District Coordinators,” which stated the following:

[SB 172] suspends the administration of the California High School Exit Examination (CAHSEE) and the requirement that students completing grade twelve successfully pass the high school exit examination as a condition of receiving a diploma of graduation from high school for the 2015–16, 2016–17, and 2017–18 school years. The law also requires local educational agencies (LEAs) to grant a diploma to any student who completed grade twelve in the 2003–04 school year, or a subsequent school year, and has met all applicable graduation requirements other than passage of the high school exit examination. The law will not take effect until January 1, 2016, at which time LEAs shall be permitted to issue diplomas to eligible students.<sup>38</sup>

The letter also stated that “With the signing of SB 172, there will be no administrations of the CAHSEE for the 2015–16, 2016–17, and 2017–18 school years. Students are encouraged to

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<sup>36</sup> Exhibit A, Request for Mandate Redetermination, pages 5-6.

<sup>37</sup> Exhibit B, Test Claim Statement of Decision, pages 16-27.

<sup>38</sup> Exhibit X, California Department of Education, Letter from Keric Ashley, Deputy Superintendent, District, School, and Innovation Branch, October 7, 2015; <https://www.cde.ca.gov/ta/tg/hs/cahseesuspendltr.asp> (accessed on Nov. 28, 2018).

work with their local school district and adult education program to meet local and state graduation requirements.”<sup>39</sup>

Statutes 2017, chapter 641, effective January 1, 2018, then repealed all the sections in the Education Code regarding the creation and administration of the HSEE, and was specifically intended to “eliminate the [HSEE]” and “remove it as a condition of receiving a diploma of graduation or a condition of graduation from high school.”<sup>40</sup>

The Statement of Decision and the Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 found reimbursable activities imposed by California Code of Regulations, title 5, sections 1200(g), 1203, 1205, 1206, 1208, 1209, 1210, 1210(c)(3), 1210(c)(5), 1210(c)(7)(A), 1210(c)(7)(B), 1211(a), 1211.5(b), 1211.5(b)(4), 1211.5(c), 1212, 1215(a)(1) 1217, and 1220.<sup>41</sup> All these regulatory sections are located in Subchapter 6 of Chapter 2 of Division 1 of Title 5 of the California Code of Regulations, with Subchapter 6 pertaining solely to the HSEE.<sup>42</sup> In addition, the entirety of Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, which pertained solely to the creation and administration of the HSEE, and included sections 60850 and 60851, has been repealed.<sup>43</sup> These two statutory sections were the only test claim statutes approved in the Commission’s March 25, 2004 Statement of Decision,<sup>44</sup> and were the reference and authority for the regulations found to constitute reimbursable activities in the Parameters and Guidelines.<sup>45</sup> Therefore, all regulatory sections found to impose reimbursable state-mandated activities in the Test Claim were suspended for the 2015-2016, 2016-2017, and 2017-2018 school years when the program was suspended by Statutes 2015, chapter 572, and the Education Code sections approved by the Commission were repealed by Statutes 2017, chapter 641, thus removing the authority for the regulations.

Based on the foregoing, the Commission finds that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, constitute a subsequent change in law, as defined.

**B. The Requester Has Made an Adequate Showing that the State’s Liability May Be Modified Based on a Subsequent Change in Law.**

At this hearing, the Commission is required only to determine whether “the request, when considered in light of all of the written comments and supporting documentation in the record of

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<sup>39</sup> Exhibit X, California Department of Education, Letter from Keric Ashley, Deputy Superintendent, District, School, and Innovation Branch, October 7, 2015; <https://www.cde.ca.gov/ta/tg/hs/cahseesuspendltr.asp> (accessed on Nov. 28, 2018).

<sup>40</sup> Exhibit A, Request for Mandate Redetermination, page 14.

<sup>41</sup> See, Exhibit B, Test Claim Statement of Decision, pages 42-46; and Exhibit C, Parameters and Guidelines, pages 2-6.

<sup>42</sup> Register 01, No. 25, and Register 03, No. 18.

<sup>43</sup> Stats. 2017, ch. 641 (AB 830), effective January 1, 2018.

<sup>44</sup> Exhibit B, Test Claim Statement of Decision.

<sup>45</sup> Exhibit C, Parameters and Guidelines, pages 2-6.

this request, has a substantial possibility of prevailing at the second hearing.”<sup>46</sup> If the Commission determines that the request has a substantial possibility of prevailing at the second hearing, the Government Code provides that the Commission shall notice a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted Test Claim Decision.<sup>47</sup>

Here, the subsequent changes in law are Statutes 2015, Chapter 572 and Statutes 2017, Chapter 641, which added sections to the Education Code expressly suspending the administration of the HSEE program for the 2015–2016, 2016–2017, and 2017–2018 school years, then repealing the sections serving as the basis for the HSEE regulations. After the request for Mandate Redetermination was filed, the regulations were repealed. And though the repealed regulations were not pled, it is established law that “Whenever by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”<sup>48</sup> As the statutes giving rise to the test claim regulations were suspended and then repealed, the regulations thus became invalid.

Therefore, Finance has made an adequate showing that the state’s liability may be modified based on Statutes 2015, chapter 572, and Statutes 2017, chapter 641, such that there is a substantial possibility that the request for a new test claim decision will prevail at the second hearing on this matter.

## **V. Conclusion**

Based on the foregoing, the Commission finds that the requester has made an adequate showing that the state’s liability for the *High School Exit Examination*, 00-TC-06, mandate may be modified based on a subsequent change in law and that Finance has a substantial probability of prevailing at the second hearing. The Commission hereby directs Commission staff to notice the second hearing for September 27, 2019 to determine whether to adopt a new test claim decision to supersede the Commission’s previously adopted Test Claim Decision on *High School Exit Examination*, 00-TC-06.

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<sup>46</sup> California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

<sup>47</sup> Government Code, section 17570(d)(4) (Stats. 2010, ch. 719 (SB 856)).

<sup>48</sup> Government Code, section 11342.2.

**DECLARATION OF SERVICE BY EMAIL**

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.

On April 30, 2019, I served the:

- **Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued April 30, 2019**

Mandate Redetermination Request, 17-MR-01

*High School Exit Examination (00-TC-06)*

Education Code Sections 60850, 60851, 60853, and 60855; Statutes 1999x, Chapter 1 and Statutes 1999, Chapter 135; California Code of Regulations, Title 5, Sections 1200-1225 (regulations effective July 20, 2001 [Register 01, No. 25] and regulations effective May 1, 2003 [Register 03, No. 18]); as alleged to be modified by Statutes 2015, Chapter 572 (SB 172); and Statutes 2017, Chapter 641 (AB 830)  
Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 April 30, 2019 at Sacramento, California.



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# COMMISSION ON STATE MANDATES

## Mailing List

**Last Updated:** 4/29/19

**Claim Number:** 17-MR-01

**Matter:** High School Exit Examination (00-TC-06)

**Requester:** Department of Finance

### TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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CALIFORNIA  
DEPARTMENT OF  
EDUCATION

**TOM TORLAKSON**

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

October 7, 2015

Dear County and District Superintendents and Charter School Administrators:

## **SUSPENSION OF THE CALIFORNIA HIGH SCHOOL EXIT EXAMINATION**

Senate Bill (SB) 172 (Liu) was signed by Governor Brown on October 7, 2015. This law suspends the administration of the California High School Exit Examination (CAHSEE) and the requirement that students completing grade twelve successfully pass the high school exit examination as a condition of receiving a diploma of graduation from high school for the 2015–16, 2016–17, and 2017–18 school years. The law also requires local educational agencies (LEAs) to grant a diploma to any student who completed grade twelve in the 2003–04 school year, or a subsequent school year, and has met all applicable graduation requirements other than passage of the high school exit examination. The law will not take effect until January 1, 2016, at which time LEAs shall be permitted to issue diplomas to eligible students.

SB 725 (Hancock), which was enacted on August 26, 2015, allows for students who completed grade twelve in 2015, who have met all other high school graduation requirements, to receive a diploma of graduation from their high school without meeting the exit examination requirement. Because this was urgency legislation, the law took effect immediately upon being enacted, allowing LEAs to immediately issue diplomas to eligible students from the class of 2015.

With the signing of SB 172, there will be no administrations of the CAHSEE for the 2015–16, 2016–17, and 2017–18 school years. Students are encouraged to work with their local school district and adult education program to meet local and state graduation requirements.

SB 172 also requires the State Superintendent of Public Instruction (SSPI) to convene an advisory panel to provide recommendations to the SSPI on the continuation of the high school exit examination and on alternative pathways to satisfy the high school graduation requirements pursuant to California Education

Code sections 51224.5 and 51225.3.

Additional information is provided in the frequently asked questions that are posted to the CDE CAHSEE Web site at <http://www.cde.ca.gov/ta/tg/hs/cahseesuspendfaq.asp>. [Note, the preceding Web address is no longer valid.] If you have any questions regarding this information, please contact the High School and Physical Fitness Assessments Office by phone at 916-445-9449 or by e-mail at [CAHSEE@cde.ca.gov](mailto:CAHSEE@cde.ca.gov).

Sincerely,

/s/

Keric Ashley, Deputy Superintendent  
District, School, and Innovation Branch

KA:mm

cc: CAHSEE District Coordinators

Last Reviewed: Thursday, May 10, 2018

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This is a historical look at the high school equivalency scoring standards for each of the three testing vendors.

[Assessment Spotlight, Issue 17](#) (added 30-Oct-2018)

California Assessment of Student Performance and Progress (CAASPP) email update, October 24, 2018.

[ELPAC Administration Research Files](#) (added 25-Oct-2018)

These research files contain results from the English Language Proficiency Assessments of California (ELPAC) administration. The data is intended for educators or researchers use to perform advanced analyses and preparation of customized reports.

[Assessment Spotlight, Issue 16](#) (added 18-Oct-2018)

California Assessment of Student Performance and Progress (CAASPP) email update, October 17, 2018.

[Assessment Spotlight, Issue 15](#) (added 15-Oct-2018)

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