Hearing Date July 28, 2006
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ITEM 6

TEST CLAIM
FINAL STAFF ANALYSIS

Education Code Sections 47605, subdivision (b)(5)(O) and 47611.5
Government Code section 3540, et seq., Statutes 1999, Chapter 828;

Charter School Collective Bargaining (99-TC-05)

Western Placer Unified School District, Claimant

EXECUTIVE SUMMARY

This agenda item was heard by the Commission on May 25, 2006. During the hearing, the Commission continued the item until the July hearing. No changes have been made to this item as prepared for the May hearing.

A copy of the May 25, 2006 hearing transcript on this item is attached.

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Government Code section 3540, et seq., Statutes 1999, Chapter 828;

Charter School Collective Bargaining (99-TC-05)

Western Placer Unified School District, Claimant

EXECUTIVE SUMMARY

The test claim was filed in November 1999 by the Western Placer Unified School District on test claim statutes that subject charter schools to the Educational Employment Relations Act (EERA). Specifically, the statutes require a charter school to insert in the charter a declaration as to whether the charter school will be deemed the public school employer for purposes of the EERA. If the charter school does not opt to be the public school employer, the school district where the charter is located is deemed the public school employer by default.

For the reasons indicated in the analysis, staff finds that, as to the test claim statutes:

- A school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school.
- Charter schools are not eligible claimants subject to article XIII B, section 6 of the California Constitution. Thus, the requirement for the charter school to be subject to the EERA, as well as the declaration in the charter whether or not the charter school shall be deemed to be the exclusive public school employer, and requiring this declaration by March 31, 2000 (Ed. Code, § 47611.5, subds. (b) & (f)) are not activities subject to article XIII B, section 6.
- The test claim statutes do not mandate an activity on county boards of education.
- Subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.
- There is no evidence in the record that a school district incurs increased costs mandated by the state (within the meaning of Government Code sections 17514 and 17556) to make written findings of fact when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).)

Recommendation

Therefore, staff recommends that the Commission adopt this analysis and deny the *Charter Schools Collective Bargaining* test claim (99-TC-05).

STAFF ANALYSIS

Claimant

Western Placer Unified School District

Chronology

11/29/99	Test Claim filed by Western Placer Unified School District, Claimant
06/13/00	Department of Finance submits comments on the test claim
07/13/00	Claimant submits rebuttal comments on the test claim
07/24/02	Claimant requests postponement of the hearing on the test claim
07/29/02	Commission staff grants postponement request
04/06/06	Commission staff issues draft staff analysis on the test claim
05/11/06	Commission staff issues final staff analysis on the test claim

Background

Charter schools are publicly funded K-12 schools that enroll pupils based on parental choice rather than residential assignment. In order to encourage innovation and provide expanded educational choices,[1] charter schools are exempt from most laws governing public education.[2] California was the second state in the nation to authorize charter schools in 1992, and they have steadily increased in number and enrollment since then.[3]

The test claim statutes subject charter schools to the Educational Employment Relations Act (EERA) or "Rodda Act."[4] Enacted in 1975, the EERA governs labor relations in California public schools with the stated purpose as follows:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems … by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public

[1] Education Code section 47601 includes these reasons, among others, in the Legislature's intent behind establishing charter schools.

[2] Education Code section 47610. Exceptions to the exemption in section 47610 include teachers' retirement, the Charter School Revolving Loan Fund, and laws establishing minimum age for public school attendance. Other areas in which charter schools are subject to the Education Code include pupil assessments (§ 47605, subd. (c)(1)), and teacher credentials ((§ 47605, subd. (l)).

[3] Office of the Legislative Analyst, "Assessing California's Charter Schools" (January 2004); See <http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm> [as of January 13, 2006].

[4] The EERA is in Education Code section 3540 et seq. (Stats. 1975, ch. 961, eff. July 1, 1976).

> school employers …and to afford certificated employees a voice in the formulation of educational policy.[5]

The EERA creates a process for groups of school district employees that share a 'community of interest' to organize and become represented by an employee organization (or union).[6] The EERA also defines the issues that may be negotiated between the school district and the employee organization,[7] and defines the rules for negotiations,[8] mediation,[9] and dispute of grievances.[10] It also establishes the Public Employment Relations Board (PERB)[11] to administer the EERA and referee labor disputes.

The Test Claim Statutes

Education Code section 47605, subdivision (b)(5)(O)[12] requires each charter school charter to contain, "[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school…."

Education Code section 47611.5 was also added by the test claim legislation. Subdivision (b) states, "If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of [the EERA]." Subdivision (f) of section 47611.5 requires, "By March 31, 2000, all existing charter schools …[to] declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter." Subdivision (c) defines the scope of representation to include discipline and dismissal of charter school employees "if the charter … does not specify that it shall comply with those statutes and regulations … that establish and regulate tenure or a merit or civil service system."

The EERA, in Government Code section 3540.1, subdivision (k), as amended by the test claim legislation, defines "public school employer" as "the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, *or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code*." (Italicized text added by Stats. 1999, ch. 828.)

Related Commission Decisions on Charter Schools

On May 26, 1994, the Commission heard and decided a related test claim: *Charter Schools*, (CSM-4437).[13] The Commission found that Statutes 1992, chapter 781 (Ed. Code, §§ 47605 &

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[5] Education Code section 3540

[6] Education Code section 3543.

[7] Education Code section 3543.2.

[8] Education Code section 3543.3.

[9] Education Code section 3548. Impasse procedures are also in this section.

[10] Education Code section 3543.

[11] Education Code section 3541.

[12] References herein are to the Education Code unless otherwise indicated.

47607) is a reimbursable state-mandated program on school districts for new activities related to initial charter school petitions, and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters.

On November 21, 2002, the Commission adopted its Statement of Decision for the *Charter Schools II* test claim (99-TC-03) finding that Statutes 1998, chapters 34 and 673 (Ed. Code, §§ 47605, subds. (j)(1) & (k)(3), 47605.5, 47607, & 47614) impose reimbursable state-mandated activities on school districts and/or county offices of education activities related to reviewing renewal petitions and permitting charter schools to use school district facilities.

On December 2, 2003, the Commission adopted consolidated parameters and guidelines for the *Charter Schools* and *Charter Schools II* decisions. School districts may charge a fee from one to three percent of the charter school's revenue for "supervisorial oversight" of the charter school.[14] This fee is a recognized offset in the *Charter Schools* parameters and guidelines.

On May 25, 2005, the Commission decided the *Charter Schools III* test claim,[15] which alleges various activities related to charter school funding and accountability, and was filed on behalf of both school districts and charter schools. The Commission found that charter schools are not eligible claimants, but found the claim partially reimbursable for school districts.

Related Commission Decisions on Collective Bargaining/EERA

In the *Collective Bargaining* statement of decision, the Board of Control determined that Statutes 1975, chapter 961 (the EERA) is a reimbursable mandate. Parameters and guidelines were adopted on October 22, 1980, and amended seven times before the decision on the next related claim: *Collective Bargaining Agreement Disclosure* (97-TC-08).

On March 26, 1998, the Commission adopted the decision for the *Collective Bargaining Agreement Disclosure* (97-TC-08) test claim. The Commission found that Government Code section 3547.5 (Stats. 1991, ch. 1213) and CDE Management Advisory 92-01 is a reimbursable mandate for requiring K-14 school districts to publicly disclosing the major provisions of all collective bargaining agreements after negotiations, but before the agreement becomes binding.

The parameters and guidelines for *Collective Bargaining Agreement Disclosure* (97-TC-08) were adopted in August 19, 1998, and consolidated with the *Collective Bargaining* parameters and guidelines. The reimbursable activities in the consolidated parameters and guidelines can be summarized as follows:

1. Determination of appropriate bargaining units for representation and determination of the exclusive representatives:

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[13] *Charter Schools* (CSM-4437) Statement of Decision adopted on July 21, 1994; parameters and guidelines adopted on October 18, 1994.

[14] Education Code section 47613 (former section 47613.7, added by Stats. 1998, ch. 34).

[15] Filed on Education Code Sections 41365, 47605, subdivisions (b),(c),(d), (j) and (l), 47604.3, 47607, subdivision (c), 47612.5, 47613 (former § 47613.7), and 47630-47664; Statutes 1996, Chapter 786, Statutes 1998, Chapter 34, Statutes 1998, Chapter 673, Statutes 1999, Chapter 162, Statutes 1999, Chapter 736, Statutes 1999, Chapter 78, California Department of Education Memo (May 22, 2000).

a. Unit determination;

b. Determination of the exclusive representative.

2. Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot.

3. Negotiations: reimbursable functions include -- receipt of exclusive representative's initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer's proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement.

4. Impasse proceedings:

a. Mediation;

b. Fact-finding publication of the findings of the fact-finding panel.

5. Collective bargaining agreement disclosure.

6.Contract administration and adjudication of contract disputes either by arbitration or litigation. Reimbursable functions include grievances and administration and enforcement of the contract.

7. Unfair labor practice adjudication process and public notice complaints.

In another related decision adopted in December 2005, the *Agency Fee Arrangements* Statement of Decision (CSM 00-TC-17, 01-TC-14), found that a portion of the EERA (Gov. Code, §§ 3543, 3546 & 3546.3, Cal. Code Regs, tit. 8 §§ 34030 & 34055) and its regulations constitute a reimbursable state-mandated program on K-14 school districts for deducting fair share fees and paying the amount to the employee organization, providing the exclusive representative of a public employee with the home address of each member of a bargaining unit, and for filing with PERB a list of names and job titles of persons employed in the unit described in the petition within a specified time.

Claimant Position

Claimant alleges that the test claim statutes impose a reimbursable mandate under section 6 of article XIII B of the California Constitution. After summarizing the test claim statutes, claimant states their consequence will be "school districts (including county superintendents of schools that sponsor charter schools), or the charter school will incur the cost of collective bargaining, depending upon the election of the charter school."[16] Claimant alleges the following activities:

- On county superintendents of schools, a higher level of service as the public school employer is required to assume the collective bargaining obligations of Government Code section 3540 through 3549 for charter schools granted under

[16] Test Claim, page 3.

the authority of a county board of education when the charter school elects not to be the public school employer. The county board will incur additional costs of having to conduct a hearing for the material change in an existing charter school's charter in order to comply with the new mandate that all charter schools' charters include a declaration regarding its status as the public school employer. Although this is a new reimbursable activity, this cost will be covered under the existing Charter School mandated reimbursement program.[17]

- On school districts, a higher level of service as the public school employer is required to assume the collective bargaining obligations of Government Code sections 3540 through 3549 for charter schools within their districts when the charter school elects not to be the "public school employer" under Section 47611.5. The school district that granted the charter will incur additional costs of having to conduct a hearing for the material change in an existing charter school's charter in order to comply with the new mandate that all charter schools' charters include a declaration regarding [their] status as the public school employer. Although this is a new reimbursable activity, this cost will be covered under the existing Charter School mandated reimbursement program.[18]

- In those cases where the charter school declares itself to be the "public school employer" … new reimbursable activities as the "public school employer" required to assume the collective bargaining obligations of Government Code sections 3540 through 3549. In addition to the costs of collective bargaining, an existing charter school is now mandated to amend its charter to include its declaration regarding its status as a "public school employer."[19]

As to the collective bargaining activities, claimant alleges activities "that mirror those already allowed under the Collective Bargaining reimbursement program."[20] Thus, claimant summarizes the activities listed in the *Collective Bargaining* parameter and guidelines listed above.

In comments submitted in July 2000 in response to the Department of Finance, claimant asserts:

> [W]here the charter school elects to be the 'public school employer' it is the charter school that assumes the new program or higher level of service in that the charter school will now be forced to comply with the collective bargaining obligations of the Educational Employment Relations Act.

Claimant agues that charter schools that make this election should be entitled to reimbursement under the current collective bargaining mandate reimbursement program. If, however, the charter school elects not to be the "public school employer' and the school district or the county office of education assume that role, claimant states that reimbursement should occur under the

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[17] Test Claim, page 3-4.

[18] Test Claim, page 4.

[19] Test Claim, page 4.

[20] Test Claim, page 4, footnote 10.

current collective bargaining program by amending the parameters and guidelines "to reflect the additional authority under which this obligation occurs."

Claimant refutes the assumption that charter school employees, for charter schools that elect not to become the "public school employer," would automatically become part of the existing bargaining units, so no additional costs would be incurred. Claimant states that this would occur in some cases by agreement of the parties; "however, in most cases the charter schools' employees will not have community of interest with school district employees and will not become part of the school districts' bargaining units." Claimant includes with its comments a copy of Assembly Bill No. 842 (Migden), a bill that was introduced in 1999 but not enacted, that would have required charter school employees to be included in existing bargaining units. Claimant attaches Assembly Bill No. 842 (hereafter AB 842) to show that the legislative intent was not for charter employees to join existing bargaining units. Thus, claimant argues that "in most cases local educational agencies would incur costs as outlined in the collective bargaining mandated reimbursement program for all additional activities assumed with these new bargaining units (if formed)."

State Agency Position

In comments submitted in June 2000, the Department of Finance (Finance) states,

> If a charter school elects [not[21]] to be the public school employer of its employees for EERA purpose, and the charter school employees are subsequently placed in the same bargaining units with which the county office of education or school district currently negotiates, the Department of Finance believes no additional State-mandated costs would be incurred.

Finance goes on to comment, "[i]f, however, a charter school declares itself the exclusive public school employer of its employees and, as a consequence, new bargaining units are established with which the county office of education or school district must conduct negotiations, we do believe additional state-mandated costs may be incurred."

No other state agencies submitted comments on the claim.

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[21] As noted by claimant, Department of Finance comments include a number of typos that lead to contradictory statements. This analysis is based on a reasonable interpretation of those comments as read by the claimant to insert the word "not" into the first sentence of the fourth full paragraph of the Department of Finance comments. The sentence should read, "If a charter school elects not to be the public school employer…"

Discussion

The courts have found that article XIII B, section 6 of the California Constitution[22] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[23] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[24] 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.[25]

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.[26]

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.[27] 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

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[22] Article XIII B, section 6, subdivision (a), (as amended in November 2004) provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

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

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

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

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

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

legislation.[28] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[29]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[30]

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.[31] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[32]

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

A. Are charter schools eligible claimants?

The test claim statutes include, in addition to the Education Code statutes pled by claimant, Government Code section 3540 et seq., the Educational Employment Relations Act (EERA). Because the Board of Control (the Commission's predecessor) already adjudicated the EERA in the *Collective Bargaining* test claim, as discussed above, this analysis of the EERA only applies to charter schools because the Commission does not have jurisdiction to reconsider the original EERA test claim.

Education Code section 47611.5, subdivision (a), states that the EERA applies to charter schools. Under subdivisions (b) and (f) of this section, as added by the test claim legislation, "all existing charter schools must declare whether or not they shall be deemed a public school employer ..." and must do so by March 31, 2000. Therefore, the first part of the analysis under issue 1 addresses whether these activities are subject to article XIII B, section 6 where the charter school has declared itself to be the public school employer. The second part of the analysis addresses whether these activities are subject to article XIII B, section 6 where the school district is the public school employer.

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

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

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

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

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

Charter School as "Public School Employer"

By way of background, charter schools are formed through a petition signed by either (1) at least one-half of the parents of the pupils that the charter school estimates will enroll in the school in its first year of operation; or (2) at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year.[33] Charters are submitted to a school district for approval or denial. The district must approve the charter unless it makes specified written findings regarding defects in the petition, the proposed program, or charter.[34] If the district denies the petition, petitioners can appeal to the county office of education or State Board of Education.[35] In certain situations, petitioners can apply for a charter directly to the county office of education[36] or State Board of Education.[37]

Finance comments, "[i]f, however, a charter school declares itself the exclusive public school employer of its employees and, as a consequence, new bargaining units are established with which the county office of education or school district must conduct negotiations, we do believe additional state-mandates costs may be incurred."

Claimant does not address the issue directly, but states in rebuttal to Finance's comments that if "the charter school elects to be the "public school employer" it is the charter school that assumes the new program or higher level of service in that the charter school will now be forced to comply with the collective bargaining obligations of the Educational Employment Relations Act." [Emphasis in original.]

The claimant in this case is a school district. Staff finds that a school district does not have standing to claim reimbursement for activities alleged to be mandated on a charter school, since school districts are not defined to include charter schools.[38] The Legislature treats charter schools differently from school districts. In addition, as discussed below, staff finds that there is not a state mandate subject to article XIII B, section 6 when charter schools are deemed public school employers.

In the *Kern High School Dist.* case,[39] the California Supreme Court considered whether school districts have a right to reimbursement for costs in complying with statutory notice and agenda requirements for various education-related programs that are funded by the state and federal government. The court held that in eight of the nine programs at issue, the claimants were not

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[33] Education Code section 47605, subdivision (a)(1). In the case of an existing public school conversion to a charter school, the petition must be signed by not less than 50 percent of the permanent status teachers currently employed at the school (Ed. Code, § 47605, subd. (a)(2)).

[34] Education Code section 47605, subdivision (b).

[35] Education Code section 47605, subdivision (j).

[36] Education Code sections 47605.5 and 47605.6.

[37] Education Code section 47605.8.

[38] Government Code section 17519 defines 'school districts' for purposes of article XIII B, section 6. As to standing, Cf. *Kinlaw v. State of California* (1991) 54 Cal. 3d 326, 334-335.

[39] *Kern High School Dist., supra,* 30 Cal.4th 727.

entitled to reimbursement for notice and agenda costs because district participation in the underlying program was voluntary. As the court stated, "if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate."[40]

In this case, the charter school is *voluntarily* participating in the charter program at issue. Because charter schools are initiated by petition of either parents or teachers, they are created voluntarily. No state mandate requires them to exist. Rather, the charter is more in the nature of a contract than a state-imposed mandate. Consequently, based on the reasoning in the *Kern* case regarding voluntary participation, charters schools are not entitled to reimbursement under article XIII B, section 6.

Moreover, a charter school that elects to be the "public school employer" would be voluntarily subjecting itself to the provisions of the EERA. Section 47611.5 of the test claim statutes states:

> (b) A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. [¶]…[¶]
> (f) By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter.

Based on the Supreme Court's reasoning discussed above regarding voluntary participation, charter schools are not entitled to reimbursement under article XIII B, section 6.

Government Code section 17519 defines "school district" for purposes of mandate reimbursement, as "any school district, community college district, or county superintendent of schools." Thus, in addition to the reasons discussed above, charter schools are not eligible for reimbursement because they are not included in this definition.

The Education Code treats charter schools as school districts for some purposes, such as special education,[41] collective bargaining,[42] and apportionment of funds.[43] And charter schools are deemed school districts for purposes of "Sections 8 and 8.5 of Article XVI of the California Constitution [Proposition 98 school funding.]"[44]

These examples, however, underscore that charter schools are not treated as school districts for purposes of mandate reimbursement under article XIII B, section 6. Charter schools are not mentioned in the mandates statutes (Gov. Code, § 17500 et seq.), nor are they considered "school districts" for purposes of mandate reimbursement in the charter school statutes (Ed. Code,

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[40] *Id.* at page 743. Emphasis in original.

[41] Education Code section 47604 et seq.

[42] Education Code section 47611.5.

[43] Education Code sections 47612, subdivision (c), 47650 and 47651.

[44] Education Code sections 47612, subdivision (c).

§ 47600 et seq.). And as mentioned above, except as otherwise specified, charter schools are "exempt from the laws governing school districts."[45] This exemption includes the mandate reimbursement statutes (Gov. Code, § 17500 et seq.).

Charter schools were established in 1992 (Stats. 1992, ch. 781), long after the Commission's statutory scheme was enacted in 1984. Yet in spite of recent amendments to article XIII B, section 6,[46] as well as both the mandates and charter school statutory schemes,[47] the Legislature has not amended either scheme to make charter schools eligible claimants. Because the definition of "school district" in Government Code section 17519 does not include charter schools, they cannot be read into that definition. The Commission, like a court, may not add to or alter the statutory language to accomplish a purpose that does not appear on the face of the statute or from its legislative history, where the language is clear.[48]

As the California Supreme Court has stated, "Where a statute, with reference to one subject [whether school districts includes charter schools] contains a given provision, the omission of such provision from a similar statute concerning a related subject … is significant to show that a different intention existed."[49] Thus, that the Legislature deemed a "charter school" to be a school district for some purposes (such as special education for example) cannot be interpreted to mean that a "charter school" should be deemed a school district for other purposes, such as mandate reimbursement. The omission of "charter school" from the definition of school districts in Government Code section 17519 is significant to show a different intention: that charter schools are not eligible for mandate reimbursement.

Therefore, staff finds that charter schools are not eligible claimants for purposes of article XIII B, section 6 of the California Constitution, nor are they eligible claimants for purposes of this test claim.

Based on this analysis, staff finds that the requirement for the charter school to be subject to the EERA, as well as the charter school's charter to declare whether or not the charter school shall be deemed to be the exclusive public school employer, and requiring this declaration by March 31, 2000 (Ed. Code, § 47611.5, subds. (b) & (f)) are not activities subject to article XIII B, section 6.

B. School district activities

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[45] Education Code section 47610.

[46] In November 2004, Proposition 1A was enacted to amend article XIII B, section 6, so that school district mandates are treated differently for purposes of mandate suspension, as well as mandates that "provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee … or … local government employee organization." (Cal. Const., art. XIII B, § 6, subds. (b)(4) & (b)(5).)

[47] For charter schools, in addition to the test claim statutes, see e.g., Statutes 2003, chapter 892. For the Commission, see e.g., Statutes 2004, chapter 890, Statutes 2002, chapter 1124, and Statutes 1999, chapter 643.

[48] *In Re. Jennings* (2004) 34 Cal. 4th 254, 265.

[49] *Id.* at page 273.

School District or County Superintendent of Schools as "Public School Employer"

Education Code section 47611.5, subdivision (b), states, "If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 … [the EERA]." Since the Legislature has made the school district the default public school employer if the charter school elects not to be the employer, the issue is whether doing so triggers mandated school district activities under article XIII B, section 6.

Claimant alleges the activities that mirror those listed in the *Collective Bargaining* parameters and guidelines are reimbursable for charter school employees: determination of appropriate bargaining units, elections and decertification of elections, negotiations, impasse proceedings, collective bargaining agreement disclosure, contract administration and adjudication of contract disputes, and unfair labor practice adjudication process and public notice complaints.

Staff finds that the test claim statutes impose EERA (collective bargaining) activities on school districts (or county superintendents that act as school districts[50]) for charter school employees. Therefore, staff finds that the test claim legislation is subject to article XIII B, section 6 when the school district acts as the public school employer, (for purposes of the EERA) for charter school employees.[51]

Claimant alleges, as to county superintendents of schools, a higher level of service as the public school employer that is required to assume the collective bargaining obligations of Government Code sections 3540 through 3549 for charter schools granted under the authority of a county board of education when the charter school elects not to be the public school employer.

Although a county board of education may grant a charter petition,[52] and may be a 'public school employer,'[53] the test claim statute does not expressly apply to county boards of education. There is no provision under section 47611.5 for a county board to be assigned the public school employer role. According to section 47611.5, subdivision (b), either the charter school elects to be the public school employer, or the school district becomes so by default. Therefore, staff

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[50] Education Code section 35160.2 states, "For the purposes of Section 35160, [regarding the authority of school districts] "school district" shall include county superintendents of schools and county boards of education."

[51] On page 4 of the test claim, in footnote 9, claimant states the "school district that granted a charter will incur additional costs … to conduct a hearing for the material change in an existing … charter … to comply with the new mandate that all … charters include a declaration regarding [their] status as the 'public school employer.' Although this is a new reimbursable activity this cost will be covered under the existing Charter School mandated reimbursement program." Staff notes that the public hearing requirement (in Ed. Code, § 47607) was decided by the Commission in the *Charter Schools* test claim (CSM 4437). Claimant's footnoted comment appears to be an observation. Because claimant alleges neither section 47607, nor activities based on it, staff makes no findings on the hearing activity.

[52] Education Code sections 47605, subdivision (j)(1), 47605.5 and 47605.6.

[53] Government Code section 3540.1, subdivision (k).

finds that claimant's alleged activity for county boards of education is not a mandate subject to article XIII B, section 6.[54]

Findings on denial

Claimant pleads section 47605, subdivision (b)(5) which requires written findings when denying a charter petition. In subparagraph (O), the findings must state, when applicable, that the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]."

Although this statute merely describes a provision that the charter must contain, it also requires school districts to make a written finding when denying a charter for lack of this public school employer declaration. Although preexisting law required written findings on denial, the plain language of section 47605, subdivision (b)(5)(O) adds the lack of a public school employer designation as another potential reason for denying a charter petition. Therefore, as a requirement imposed on school districts when making applicable findings, staff finds that section 47605, subdivision (b)(5)(O) is subject to article XIII B, section 6.

Although in the *Charter Schools III* test claim (99-TC-14), the claimant pled that the activity of making written findings on denial of a charter is reimbursable, the statutes pled in that claim did not contain the public school employer declaration requirement of subdivision (b)(5)(O). Thus, staff finds that it has jurisdiction over this test claim statute, because subdivision (b)(5)(O) was not pled in the *Charter Schools III* test claim.

C. Does the test claim legislation constitute a "program" within the meaning of article XIII B, section 6?

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," defined as 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. [55] Only one of these findings is necessary to trigger article XIII B, section 6.[56]

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[54] On page 4 of the test claim, in footnote 8, claimant states that the "county board of education … will incur additional costs of having to conduct a hearing for the material change in an existing … charter in order to comply with the new mandate that all … charters include a declaration regarding [their] status as the 'public school employer.' Although this is a new reimbursable activity this cost will be covered under the existing Charter School mandated reimbursement program." Staff notes that the public hearing requirement for school districts (in Ed. Code, § 47607) was decided by the Commission in the *Charter Schools* test claim (4437). Claimant's footnoted comment appears to be an observation. Because claimant alleges neither section 47607, nor activities based on it, staff makes no findings on the hearing activity.

[55] *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

[56] *Carmel Valley Fire Protection District v. State of California, et al.* (1987) 190 Cal.App.3d 521, 537.

Of the activities discussed above, only the following that are subject to article XIII B, section 6 are now under consideration:

- Subjecting school districts to the EERA (collective bargaining, Gov. Code, § 3540 et seq.) for charter school employees (Ed. Code, § 47611.5) when the district assumes the role of public school employer.
- Including in written findings when denying a charter petition that the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).)

Staff finds that the test claim statutes constitute a program within the meaning of article XIII B, section 6. Although courts have generally held that mandates that affect employee benefits do not constitute a program within the meaning of article XIII B, section 6,[57] the EERA transcends ordinary employee rights or benefits.

For example, Government Code section 3540 specifically declares the EERA's legislative intent: "It is the purpose of this chapter to … afford certificated employees *a voice in the formation of educational policy.*" [Emphasis added.] Moreover, Government Code section 3543.2 of the EERA includes the following: "[T]he exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law."[58]

The courts have held that although numerous private schools exist, education is a peculiarly governmental function and public education is administered by local agencies to provide a service to the public.[59] Thus, because the test claim statutes affect the educational policy of school districts that are public school employers as to their charter school(s), staff finds that the test claim statutes constitute a program within the meaning of article XIII B, section 6.

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[57] In *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, the court held that legislation affording local agency employees the same increased level of workers' compensation benefits to employees in private organizations was not a program. Likewise, in *City of Richmond v. Commission on State Mandates* (1998) 64 Cal.App.4th 1190, the court held that legislation requiring local governments to provide death benefits to local safety officers under both the Public Employees Retirement System and the workers' compensation system was not a program. Also, the court in *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484, determined that a temporary increase in PERS benefits to retired employees, resulting in higher contribution rates for local government, did not constitute a program. And in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, the California Supreme Court determined that providing unemployment compensation protection to a city's employees was not a service to the public.

[58] In addition to certificated employees, the EERA also applies to classified employees. (Gov. Code, § 3540.1 subd. (e)).

[59] *Long Beach Unified School Dist.* (1990) 225 Cal.App.3d 155, 172.

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?

To determine whether 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 enacting the test claim legislation.[60] And the test claim legislation must increase the level of governmental service provided to the public.[61] Each activity is discussed separately.

EERA

The issue is whether subjecting charter schools to the EERA for charter school employees creates any new school district activities, thereby imposing a new program or higher level of service on school districts. Staff finds that it does not.

Finance, in its June 2000 comments on the test claim, states,

> If a charter school elects [not[62]] to be the public school employer of its employees for EERA purpose, and the charter school employees are subsequently placed in the same bargaining units with which the county office of education or school district currently negotiates, the Department of Finance believes no additional State-mandated costs would be incurred.

Claimant, in response to Finance's comments, states that Finance seems to argue that "if the charter school elects not to be the "public school employer" that the school district and/or county office of education will not assume any additional state mandated costs." Clamant assumes that Finance takes the position that these costs would be covered by the current collective bargaining reimbursement program. According to claimant:

> [I]n those instances where a charter school elects not to be the 'public school employer' and the school district or the county office of education assumes this responsibility that the costs for collective bargaining can be covered under the current collective bargaining mandated reimbursement program. However, the parameters and guidelines for the collective bargaining reimbursement program would have to be amended to reflect the additional authority under which this obligation occurs."

Claimant goes on to refute the assumption that employees of charter schools that elect not to become the "public school employer," would automatically become part of the existing bargaining units, so no additional costs would be incurred. Claimant states that this would occur in some cases by agreement of the parties; "however, in most cases the charter schools'

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

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

[62] As noted by claimant, Department of Finance comments include a number of typos that lead to contradictory statements. This analysis is based on a reasonable interpretation of those comments as read by the claimant to insert the word "not" into the first sentence of the fourth full paragraph of the Department of Finance comments. The sentence should read, "If a charter school elects not to be the public school employer…"

employees will not have community of interest with school district employees and will not become part of the school districts' bargaining units. Claimant includes with its comments a copy of AB 842 (Migden), a bill introduced in 1999 but not enacted, that would have required charter school employees to be included in existing bargaining units. Claimant includes AB 842, apparently attempting to show that the legislative intent was not for charter employees to join existing bargaining units. Claimant argues that "in most cases local educational agencies would incur costs as outlined in the collective bargaining mandated reimbursement program for all additional activities assumed with these new bargaining units (if formed)."

Staff disagrees. Other than claimant's assertions[63] and AB 842 (which was not enacted), claimant provides no evidence or legal authority that charter school employees, in a school district where the charter school is not the public school employer, would not join established collective bargaining units. Rather, the statutory scheme authorizes the new employees to join the established units[64] so that the school district is not required to engage in new activities with regards to the new charter school employees.

As to claimant's assertions regarding AB 842, where the Legislature simultaneously enacts a bill and rejects another, there is inference of legislative intent.[65] The legislative intent of AB 842, however, does not reveal whether charter school employees join existing bargaining units. It merely demonstrates that the Legislature did not enact AB 842 to force them to do so. Thus, legislative rejection of AB 842 sheds little light on the issue of whether charter school employees join existing bargaining units.

Therefore, staff finds that subjecting charter schools to the EERA for charter school employees does not create any new activities – and therefore is not a new program or higher level of service - for school districts.

Findings on Denial

The next issue is whether the following is a new program or higher level of service on school districts: including in written findings when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).)

Preexisting law (Stats. 1998, ch. 34) requires the school district to make written findings of fact, as specified, to support denying a charter petition. Preexisting law did not, however, specify the lack of a public school employer declaration as one of the possible findings. Therefore, staff finds that it is a new program or higher level of service for a school district to make written

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[63] As to claimant's assertions, statements of fact are to be accompanied by a declaration under penalty of perjury (Cal. Code Regs, tit. 2, § 1183.03, subd. (d)). The record contains no such claimant declaration in its comments in response to Finance, or in any comments on the issue of charter school employees joining existing bargaining units when the school district is the public school employer.

[64] Education Code section 47611.5.

[65] *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3rd 1379, 1396.

findings of fact when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).) Because this is now the sole activity that constitutes a new program or higher level of service under this test claim, it alone is considered below.

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 test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim legislation must impose costs mandated by the state.[66] In addition, no statutory exceptions listed in Government Code section 17556 can apply. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny 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.

With its test claim, claimant files a declaration from the Western Placer Unified School District that it "will/has incurred significantly more than $200[67] to implement these new duties mandated by the state for which Western Placer Unified School District has not be [sic] reimbursed…" The new duties for which it claims to have incurred costs, however, do not include making findings to deny a charter petition for lack of declaration as to the public school employer for purposes of the EERA (Ed. Code, § 47605, subd. (b)(5)(O)). Thus, there is no evidence in the record that the claimant has or will incur the cost of making this written finding.

The Commission must base its findings on substantial evidence in the record.[68]

> …[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.[69]

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

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[66] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[67] The current requirement is $1000 in costs (Gov. Code, § 17564, as amended by Stats. 2004, ch. 890).

[68] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515. Government Code section 17559, subdivision (b).

[69] *Desmond v. County of Contra Costa* (1993) 21 Cal. App. 4th 330, 335.

determine whether or not the agency decision is supported by "substantial evidence."[70]

The administrative record, including claimant's declaration, does not indicate that there are costs for making written findings on denial for lack of a declaration in the charter as to the public school employer. Therefore, because of this lack of evidence in the record, staff finds that test claim statute (Ed. Code, § 47605, subd. (b)(5)(O)) does not impose increased "costs mandated by the state" on school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

CONCLUSION

For the reasons indicated above staff finds that, as to the test claim statutes:

- A school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school.
- Charter schools are not eligible claimants subject to article XIII B, section 6 of the California Constitution. Thus, the requirement for the charter school to be subject to the EERA, as well as the declaration in the charter whether or not the charter school shall be deemed to be the exclusive public school employer, and requiring this declaration by March 31, 2000 (Ed. Code, § 47611.5, subds. (b) & (f)) are not activities subject to article XIII B, section 6.
- The test claim statutes do not mandate an activity on county boards of education.
- Subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.
- There is no evidence in the record that a school district incurs increased costs mandated by the state (within the meaning of Government Code sections 17514 and 17556) to make written findings of fact when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).)

Recommendation

Staff recommends that the Commission adopt this analysis and deny the *Charter Schools Collective Bargaining* test claim (99-TC-05).

[70] *Ibid.*