

ITEM 4
MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION
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, 2003¹

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

¹ 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.

EXECUTIVE SUMMARY

Overview

On July 26, 2019, the Commission on State Mandates (Commission) adopted its Decision finding that the Department of Finance (Finance) 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 and directed staff to set the second hearing in this matter to determine whether a new test claim decision should be adopted to supersede the prior test claim decision based on a subsequent change in law that modifies the state's liability.

Specifically, the Commission found that Statutes 2015, chapter 572, section 2 (SB 172) 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 successfully pass the high school exit examination in order to graduate from high school. The Commission also found that Statutes 2017, chapter 641, section 16 (AB 830), effective January 1, 2018, then expressly repealed the statutes that impose the mandate, and declares that "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."²

And, after the Request for Mandate Redetermination was filed, California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18, which were found to impose a reimbursable state mandate by the Commission in *High School Exit Examination*, 00-TC-06, were repealed, effective February 19, 2019, in accordance with the repeal of the test claim statutes.³

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law (that is, the suspension and repeal of the test claim statutes) and, if so, whether to adopt a new test claim decision to supersede the previously adopted test claim decision, reflecting the state's modified liability.⁴

Staff recommends that the Commission approve the request for a new test claim decision for *High School Exit Examination*, 00-TC-06, and finds that the program, beginning July 1, 2016, no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution based on the suspension of the program by Statutes 2015, chapter 572, and the repeal of the program by Statutes 2017, chapter 641.

² Exhibit E, Decision, First Hearing.

³ 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.)

⁴ California Code of Regulations, title 2, section 1190.5(b)(1).

Procedural History

On July 26, 2019, at the first hearing on this Request for Mandate Redetermination, the Commission adopted its Decision finding that Finance made an adequate showing that the Request identified a subsequent change in law, as defined, that may modify the state's liability for this program such that Finance had a substantial possibility of prevailing at this second hearing, and directing staff to proceed to the second hearing.⁵

On July 26, 2019, Commission staff issued the Draft Proposed Decision for the second hearing and the Draft Expedited Amendment to Parameters and Guidelines.⁶ No comments were filed on the Draft Proposed Decision, Second Hearing. On August 15, 2019, the State Controller (Controller) filed comments stating that they did not recommend any changes to the Draft Expedited Amendment to Parameters and Guidelines. On August 19, 2019, Commission staff issued the Draft Proposed Decision and Amendment to Parameters and Guidelines.⁷ No comments were filed on the Draft Proposed Decision and Amendment to Parameters and Guidelines.

Commission Responsibilities

Government Code section 17570 provides a process whereby a previously determined mandate finding may be redetermined by the Commission, based on a subsequent change in law. The redetermination process requires two hearings. With regard to second hearing the Commission's regulations state:

If the Commission proceeds to the second hearing, it shall consider whether the state's liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.⁸

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law, as defined in section 17570, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision, reflecting the state's modified liability.

Staff Analysis

Statutes 2015, Chapter 572 and Statutes 2017, Chapter 641, a Subsequent Change in Law, Has Modified the State's Liability for the High School Exit Examination Program.

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, as

⁵ Exhibit E, Decision, First Hearing.

⁶ Exhibit F, Draft Proposed Decision, Second Hearing; Exhibit G, Draft Expedited Amendment to Parameters and Guidelines.

⁷ Exhibit I, Draft Proposed Decision and Amendment to Parameters and Guidelines.

⁸ California Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).

added by Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539), and California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, 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 17514.⁹ The Commission found that the test claim statutes and regulations imposed a reimbursable mandate on school districts to provide notice to parents of transfer students of the HSEE and its requirements, maintain documentation of the provision of that notice, determine whether English-learning pupils possessed sufficient English language skills to be assessed with the HSEE, administer the HSEE to all pupils in grade 10, maintain security during the HSEE to prevent cheating, and, provide HSEE data to the Superintendent of Public Instruction.¹⁰

Effective January 1, 2016, Statutes 2015, chapter 572 added sections 60851.5 and 60851.6 to the Education Code. Section 60851.5 suspended the administration of the HSEE, and the requirement that grade 12 pupils pass it in order to graduate, for the 2015-16, 2016-17, and 2017-18 school years. Section 60851.6 required the granting of “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. And, after the Request for Mandate Redetermination was filed, the State Board of Education repealed California Code of Regulations, title 5, sections 1200-1225.¹¹

Staff finds the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for *High School Exit Examination*, 00-TC-06, has been modified based on a subsequent change in law. Specifically, Statutes 2015, chapter 572, effective January 1, 2016, suspended administration of the high school exit exam (HSEE, or CAHSEE) and the requirement that each pupil completing grade 12 successfully pass the HSEE in order to receive a diploma of graduation or to graduate from high school for the 2015-2016, 2016-2017, and 2017-2018 school years. Statutes 2017, chapter 641, effective January 1, 2018, then expressly repealed the statutes that impose the mandate. The approved activities in *High School Exit Examination*, 00-TC-06 were imposed entirely and only by these statutes and the regulations adopted to implement them. Although the implementing regulations were not amended when the program was suspended and had not yet been repealed when the request for mandate redetermination was filed, it is established law that “. . . no regulation adopted is valid or effective unless consistent and not in

⁹ Exhibit B, Test Claim Statement of Decision.

¹⁰ Exhibit C, Parameters and Guidelines.

¹¹ 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.)

conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”¹² Thus, the regulations must be interpreted consistent with the statutes from which their authority and reference is derived. The regulations were repealed effective February 19, 2019.¹³

Finance urges the Commission to end the state’s liability for this program on January 1, 2016.¹⁴ However, Government Code section 17570(f) expressly states that “[a] request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for . . . loss of reimbursement for that fiscal year.”¹⁵ This Request for Mandate Redetermination was filed June 28, 2018, establishing a loss of reimbursement beginning July 1, 2016.¹⁶

Accordingly, staff finds that the activities determined to impose a reimbursable mandate in *High School Exit Examination*, 00-TC-06, as set forth in Education Code sections 60850 and 60851, and California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, are no longer mandated by the state pursuant to Statutes 2015, chapter 572 (SB 172) and Statutes 2017, chapter 641 (AB 830) and no longer constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning July 1, 2016.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision as its new Test Claim Decision, ending reimbursement for the mandated program beginning July 1, 2016.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed new Test Claim Decision following the hearing.

¹² Government Code, section 11342.2.

¹³ Register 2019, No. 8.

¹⁴ Exhibit A, Request for Mandate Redetermination, page 6.

¹⁵ See also, section 1190.1(f) of the Commission’s regulations.

¹⁶ Exhibit A, Request for Mandate Redetermination.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION:

Education Code Sections 60850, 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, 2003¹⁷

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 September 27, 2019)

¹⁷ 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 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 the California Department of Education (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.

DECISION

The Commission on State Mandates (Commission) heard and decided this Mandate Redetermination during a regularly scheduled hearing on September 27, 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, 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/modified] the Proposed Decision as its new Test Claim Decision to supersede the previously adopted Test Claim Decision by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jaqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	

Summary of the Findings

The Commission finds the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for *High School Exit Examination*, 00-TC-06, has been modified based on a subsequent change in law. Specifically, Statutes 2015, chapter 572, effective January 1, 2016, suspended administration of the high school exit exam (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 HSEE in order to receive a diploma of graduation or to graduate from high school. Statutes 2017, chapter 641, effective January 1, 2018, then expressly repealed the statutes that impose the mandate. Although the implementing regulations were not repealed at the time the Request for Mandate Redetermination was filed and so were not pled, it is established law that "... 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."¹⁸ Thus, the regulations must be interpreted consistent with the statutes from which their authority and reference is derived. Therefore, the

¹⁸ Government Code, section 11342.2.

implementing regulations lack the force of law effective January 1, 2018. Additionally, after the Request for Mandate Redetermination was filed, California Code of Regulations, title 5, sections 1200-1225, which encompasses the test claim regulations, 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18, were repealed effective February 19, 2019, in accordance with the repeal of the test claim statutes.¹⁹

Pursuant to Government Code section 17570, the Commission approves the request for a new test claim decision to supersede the previously adopted Decision based on a subsequent change in law and concludes that *High School Exit Examination*, 00-TC-06, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning July 1, 2016.

COMMISSION FINDINGS

I. Chronology

06/28/2018	The Department of Finance (Finance) filed the Request for Mandate Redetermination. ²⁰
08/31/2018	The State Controller's Office (Controller) filed comments on the Request for Mandate Redetermination. ²¹
07/26/2019	The Commission adopted the Decision, First Hearing and directed Commission staff to notice the second hearing. ²²
07/26/2019	Commission staff issued the Draft Proposed Decision, Second Hearing and the Draft Expedited Amendment to Parameters and Guidelines. ²³
08/15/2019	The Controller filed comments on the Draft Expedited Amendment to Parameters and Guidelines. ²⁴
08/19/2019	Commission staff issued the Draft Proposed Decision and Amendment to Parameters and Guidelines. ²⁵

¹⁹ 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.)

²⁰ Exhibit A, Request for Mandate Redetermination.

²¹ Exhibit D, Controller's Comments on the Request for Mandate Redetermination.

²² Exhibit E, Decision, First Hearing.

²³ Exhibit F, Draft Proposed Decision, Second Hearing; Exhibit G, Draft Expedited Amendment to Parameters and Guidelines.

²⁴ Exhibit H, Controller's Comments on the Draft Expedited Amendment to Parameters and Guidelines.

²⁵ Exhibit I, Draft Proposed Decision and Amendment to Parameters and Guidelines.

II. Background

On March 25, 2004, the Commission adopted the Test Claim Statement of Decision in *High School Exit Examination*, 00-TC-06.²⁶ On April 26, 2006, the Commission adopted the Parameters and Guidelines for the following reimbursable activities imposed by 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, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18.

- 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 12th 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 pupils²⁷ possess sufficient English language skills at the time of the HSEE to be assessed²⁸ 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:

²⁶ Exhibit B, Test Claim Statement of Decision.

²⁷ As defined in Education Code section 435, subdivision (a).

²⁸ Criteria are identified in Education Code section 313.

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.²⁹

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."

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, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18, which were found to impose a reimbursable state mandate by the

²⁹ Exhibit C, Parameters and Guidelines.

Commission in *High School Exit Examination*, 00-TC-06, were repealed effective February 19, 2019, in accordance with the repeal of the test claim statutes.³⁰

The Assembly Floor Analysis for AB 830 explains the history of Statutes 2015, chapter 572 and Statutes 2017, chapter 641 as follows:

New standards. The CAHSEE was aligned to the content standards for English language arts and mathematics that were adopted pursuant to the 1999 education reform package of bills. In 2010 the SBE voted to adopt the Common Core State Standards (CCSS). The adoption of the CCSS led to the development of new statewide assessments that are aligned to the new standards. However, the CAHSEE is still aligned to the old standards.

Because the CAHSEE is not aligned to the CCSS, which have been adopted by California, the Legislature enacted SB 172 (Liu), Chapter 572, Statutes of 2015, which suspended CAHSEE for the 2015-16, 2016-17, and 2017-18 fiscal years and, until July 31, 2018, requires LEAs to grant a high school diploma to any pupil who has met all other requirements for high school graduation since 2003-04.

Task force recommendations. SB 172 also required the SPI to convene a task force to make recommendations regarding the continuation of a high school exit exam or other means of meeting high school graduation requirements. The task force appointed by the SPI consisted of 29 members who represented teachers, school administrators, school board members, parents, students, the business community, testing experts, and the Legislature. The SPI's report and recommendations were released September 2016. The recommendation of the SPI is to remove the requirement to pass the CAHSEE as a condition of high school graduation. This bill implements that recommendation.³¹

On July 26, 2019, at the first hearing, the Commission heard and adopted its Decision finding that the requester identified a subsequent change in law, as defined, and made an adequate showing that the request, considered in light of all evidence in the record, had a substantial possibility of prevailing at this second hearing.³²

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

³⁰ 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.).

³¹ Exhibit J, Assembly Floor Analysis, Concurrence in Senate Amendments (Sept. 13, 2017), Assembly Bill 830 (2017-2018 Reg. Sess.), page 2.

³² Exhibit E, Decision, First Hearing.

school diplomas to grade 12 students who successfully fulfilled graduation requirements but did not graduate as a result of not passing the [HSEE].”³³ 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].”³⁴

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.”³⁵ 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.”³⁶ Finance did not file comments on the Draft Proposed Decision, Second Hearing, the Draft Expedited Amendment to Parameters and Guidelines, or the Draft Proposed Decision and Amendment to Parameters and Guidelines.

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.”³⁷ On August 15, 2019, the Controller filed comments stating that it did not recommend any changes to the Draft Expedited Amendment to Parameters and Guidelines.³⁸ The Controller did not file comments on the Draft Proposed Decision and Amendment to Parameters and Guidelines.

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 state’s liability. Government Code section 17570 provides 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

³³ Exhibit A, Request for Mandate Redetermination, page 5.

³⁴ Exhibit A, Request for Mandate Redetermination, page 5.

³⁵ Exhibit A, Request for Mandate Redetermination, page 5.

³⁶ Exhibit A, Request for Mandate Redetermination, page 6.

³⁷ Exhibit D, Controller’s Comments on the Request for Mandate Redetermination.

³⁸ Exhibit H, Controller’s Comments on the Draft Expedited Amendment to Parameters and Guidelines.

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.”³⁹

California Code of Regulations, title 2, section 1190.5(b)(1) provides that “[i]f the Commission proceeds to the second hearing, it shall consider whether the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.”⁴⁰

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

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 programs or increased level of service...

The purpose of article XIII B, section 6 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.”⁴¹ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”⁴²

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.⁴³
2. The mandated activity constitutes a “program” that either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.⁴⁴
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.⁴⁵

³⁹ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

⁴⁰ Register 2014, No. 21.

⁴¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

⁴² *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

⁴³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

⁴⁴ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

⁴⁵ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835.

4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁴⁶

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.⁴⁷ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁴⁸ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁴⁹

Therefore, the issue before the Commission at this second hearing is whether the state’s liability has been modified based on a subsequent change in law and, if so, whether to adopt a new test claim decision to supersede the previously adopted test claim decision, reflecting the state’s modified liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.⁵⁰

A. Statutes 2015, Chapter 572, and Statutes 2017, Chapter 641, a Subsequent Change in Law Within the Meaning of Government Code Section 17570, Has Modified the State’s Liability for *High School Exit Examination*, 00-TC-06, Resulting in No Costs Mandated by the State Beginning July 1, 2016.

In *High School Exit Examination*, 00-TC-06, the Commission approved Education Code sections 60850 and 60851, which mandated school districts to provide notice to students about the HSEE and required them to administer the test on dates designated by the Superintendent of Public Instruction. The Commission also found reimbursable state-mandated activities imposed by California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225.⁵¹ All these regulatory sections are located in Subchapter 6 of Chapter 2 of Division 1 of Title 5 of the California Code of

⁴⁶ *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.

⁴⁷ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

⁴⁸ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁴⁹ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

⁵⁰ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

⁵¹ See, Exhibit B, Test Claim Statement of Decision, pages 42-46; and Exhibit C, Parameters and Guidelines, pages 2-6.

Regulations, with Subchapter 6 pertaining solely to the HSEE, and identify as their authority and reference Education Code sections 60850 and 60851.⁵²

As discussed in the Decision, First Hearing, Statutes 2015, chapter 572, effective January 1, 2016, added section 60851.5 to the Education Code, suspending the administration of the HSEE. 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. Accordingly, the Commission found that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, constitute a subsequent change in law that may modify the state's liability.⁵³

The Commission finds that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, which suspended and repealed the test claim statutes in *High School Exit Examination*, 00-TC-06 and which constitute a subsequent change in law, have modified the state's liability for the program within the meaning of Government Code section 17570. Article XIII B, section 6 of the California Constitution requires that "[w]henver 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 the local government for the costs of the program or increased level of service" Reimbursement under article XIII B, section 6 is limited. Local agencies and school districts are only entitled to reimbursement when the costs incurred are mandated, or "ordered" or "commanded," by the state.⁵⁴ Activities undertaken at the option or discretion of local government, without legal compulsion or compulsion as a practical matter, do not trigger a state-mandated program within the meaning or article XIII B, section 6.⁵⁵

As noted above, Education Code section 60851.5, as added by Statutes 2015, chapter 572, effective January 1, 2016, suspended the administration of the HSEE for the 2015-16, 2016-17, and 2017-18 school years.⁵⁶ 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, also added by Statutes 2015, chapter 572, 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."

As a result of this statute, the California Department of Education issued a letter on October 7, 2015, to all county and district school superintendents and "CAHSEE District

⁵² Register 01, No. 25, and Register 03, No. 18.

⁵³ Exhibit E, Decision, First Hearing.

⁵⁴ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.

⁵⁵ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731 (Kern High School Dist.); *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1365-1366 (POBRA).

⁵⁶ Education Code section 60851.5 (Stats. 2015, ch. 572, § 2).

Coordinators,” stating that “With the signing of SB 172, *there will be no administration 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.”⁵⁷ Thus, school districts were not required by state law to administer the HSEE beginning January 1, 2016, and students completing grade twelve were no longer required to successfully pass the HSEE as a condition of receiving a high school diploma.

Statutes 2017, chapter 641, effective January 1, 2018, then repealed Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, pertaining to the HSEE, commencing with section 60850 and including 60851.

The implementing test claim regulations were repealed after the filing of the Request for Mandate Redetermination, effective February 19, 2019.⁵⁸ Furthermore, it is established law that “. . . 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.”⁵⁹ With the governing statutes repealed, the implementing regulations would no longer be longer valid or effective, even had they not been repealed.

Accordingly, beginning with the suspension of the program on January 1, 2016, school districts were no longer mandated by state law to administer the HSEE to students in accordance with the Parameters and Guidelines for *High School Exit Examination*, 00-TC-06.

Finance urges the Commission to end the state’s liability for this program on January 1, 2016.⁶⁰ However, Government Code section 17570(f) expressly states that “[a] request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for . . . loss of reimbursement for that fiscal year.”⁶¹ Thus, the period of reimbursement affected by a mandate redetermination is established by law and is based on the filing date of a request for mandate redetermination. This Request for Mandate Redetermination was filed June 28, 2018, establishing a loss of reimbursement beginning July 1, 2016.⁶²

Based on the foregoing, the Commission finds that the activities determined to impose a reimbursable mandate in *High School Exit Examination*, 00-TC-06, as set forth in Education Code sections 60850 and 60851, and California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, are

⁵⁷ Exhibit J, 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), emphasis added.

⁵⁸ 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.)

⁵⁹ Government Code, section 11342.2.

⁶⁰ Exhibit A, Request for Mandate Redetermination, page 6.

⁶¹ See also, section 1190.1(f) of the Commission’s regulations.

⁶² Exhibit A, Request for Mandate Redetermination.

no longer mandated by the state pursuant to Statutes 2015, chapter 572 (SB 172) and Statutes 2017, chapter 641 (AB 830), and no longer constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning July 1, 2016.

V. Conclusion

Based on the foregoing, the Commission approves the Request for Mandate Redetermination and concludes that the *High School Exit Examination*, 00-TC-06 mandate has ended based on a subsequent change in law and does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning July 1, 2016.