BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 38139 (former § 40048), 49068.5, 49068.6, 49370 and Section 14 of Statutes 1986; Chapter 249, Statutes 1986, Chapter 249; Statutes 1994, Chapter 922; Statutes 1996, Chapter 277; Statutes 1999, Chapters 832 and 1013 Filed on December 5, 2001 By San Jose Unified School District, Claimant	No. 01-TC-09 ***Missing Children Reports*** STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on January 27, 2005)*

STATEMENT OF DECISION

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

Paula Higashi

PAULA HIGASHI, Executive Director

2-2-05

Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 38139 (former § 40048), 49068.5, 49068.6, 49370 and Section 14 of Statutes 1986, Chapter 249; Statutes 1986, Chapter 249; Statutes 1994, Chapter 922; Statutes 1996, Chapter 277; Statutes 1999, Chapters 832 and 1013 Filed on December 5, 2001 By San Jose Unified School District, Claimant	No. 01-TC-09 ***Missing Children Reports*** STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on January 27, 2005)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on January 27, 2005. Mr. Keith Petersen appeared on behalf of the claimant, San Jose Unified School District. Mr. Matt Aguilera appeared on behalf of the Department of Finance (DOF).

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

The Commission adopted the staff analysis to partially approve this test claim by a vote of 4-1.

BACKGROUND

Test claim statutes: The thrust of the test claim legislation was enacted as the Davis-Grisham Missing Children Act of 1986 (Stats. 1986, ch. 249, hereafter "Davis-Grisham Act").[1] Section 2 of the bill states: "It is the intent of the Legislature that the State of California comply with the Congressional Missing Children's Act of 1984, and that in cooperation with interested parties facilitate locating missing children."

Another provision in the Davis-Grisham Act, section 40048[2] (later moved to 38139)[3] states that schools "shall post ... information regarding missing children provided by the Department of

[1] In 1987, the Commission decided claim CSM-4255, *Missing Persons Reports II,* regarding Statutes 1986, chapter 249, among others. That decision involved different parties and issues than those in the Education Code sections pled by claimant, so it does not concern this test claim.

[2] All statutory references are to the Education Code unless otherwise indicated.

Justice." This provision refers to Penal Code section 14208, also originally part of the Davis-Grisham Act, which requires the DOJ to operate a missing children hotline and relay information obtained to local law enforcement. The Davis-Grisham Act also includes a provision for newly enrolled or transfer pupils that "the principal of the school that the child enters or to which he or she transfers is urged to check to see if the child resembles a child listed as missing by the bulletins provided by the [DOJ]... ." [4] Additionally, an uncodified provision of the Davis-Grisham Act pled by claimant states:

> The Legislature urges school districts to implement programs to notify parents when their child is absent from elementary or junior high school. The Legislature also urges school districts to cooperate with local law enforcement authorities, the Department of Justice, or appropriate nonprofit organizations approved by the Department of Justice which develop optional programs to provide interested parents with a fingerprint card or photo identification card of their child.[5]

The Legislature revisited the problem of missing children in 1999. According to the California Missing Children Clearinghouse, in 1998 there were 118,000 missing children reported in California, the majority of which (100,000) were runaways; the remaining fall into many categories that include abduction by parents (2,700), or by strangers (59).[6] The Legislature's response was Statutes 1999, chapter 832, requiring law enforcement agencies responsible for the investigation of missing children to inform the child's school district that the child is missing. It also states, "Every school notified pursuant to this section shall place a notice that the child has been reported missing on the front of each missing child's school record."[7] The bill further states, "If a school receives a record inquiry or request from any person or entity for a missing child about whom the school has been notified pursuant to this section, the school shall immediately notify the law enforcement authorities who informed the school of the missing child's status."[8] According to the author, the bill is "an attempt to address the situation where a person (most often the noncustodial parent) is taking a child with the intent of starting a new life. This new life includes registering a child in a new school."[9]

---

[3] Section 40048 was moved and renumbered to section 38139 by Statutes 1996, chapter 277, a reorganization bill that consolidated various school facilities statutes in the Education Code. It was amended again by Statutes 1999, chapter 832, to correct a Penal Code reference.

[4] Education Code section 49068.5. This provision was amended nonsubstantively by Statutes 1994, chapter 922 (Assem. Bill No. 2587) to revise Penal Code references among other things.

[5] Statutes 1986, chapter 246, section 14.

[6] Assembly Committee on Appropriations, Analysis of Assembly Bill No. 646 (1999-2000 Reg. Sess.) as introduced, page 2.

[7] Education Code section 49068.6, subdivision (b).

[8] Education Code section 49068.6, subdivision (d).

[9] Assembly Committee on Education, Analysis of Assembly Bill No. 646 (1999-2000 Reg. Sess.) as introduced, page 2.

Statutes 1999, chapter 1013, among other things, enacted section 49370, which declares legislative intent "to require that specified persons, including school teachers [and other school employees] ... report missing children to a law enforcement agency in a timely manner, in order to provide those children a necessary level of protection when they are at serious risk." The author stated the purpose of this section as follows: "... we want to make it clear to school personnel that the best way to locate a missing child is to notify law enforcement in a timely manner that the child is missing."[10]

Federal Law: The stated purpose of the Davis-Grisham Act is "to comply with the Congressional Missing Children's [Assistance] Act of 1984,[11] and that in cooperation with interested parties facilitate locating missing children."[12] The federal act:

> Directs the Administrator of the Office of Juvenile Justice and Delinquency Prevention [in the federal Department of Justice] to: (1) arrange coordination among all federally funded missing children programs; (2) prepare an annual comprehensive plan to facilitate such coordination; (3) establish and operate a national toll-free telephone line for missing children; (4) establish and operate a national resource center and clearinghouse [The National Center for Missing and Exploited Children, see http://www.missingkids.org/] ; and (5) compile and disseminate an annual summary of recent research and demonstration projects. [The Act] [e]stablishes an Advisory Board on Missing Children to advise the Administrator and the Attorney General and to approve the annual comprehensive coordination plan, and authorizes the Administrator to make grants and contracts for research, demonstration projects, and service programs.[13]

This federal act does not require states or local law enforcement to perform any activities.

The federal missing children's statute (42 U.S.C. § 5773 (c)) was amended in 1999[14] to require the federal Administrator of the Office of Juvenile Justice to "provide to State and local governments, public and private nonprofit agencies, and individuals information to facilitate the lawful use of school records and birth certificates to identify and locate missing children." This is the sole reference to schools in these statutes.

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. The claimant is requesting reimbursement of the school district's costs for:

---

[10] Senate Committee on Public Safety, Analysis of Senate Bill No. 570 (1999-2000 Reg. Sess.) as introduced, page 6.

[11] Public Law 98-473.

[12] Statutes 1986, chapter 249, section 2.

[13] <http://www.findthekids.org/pdf/childrenassistance.pdf> as of November 22, 2004.

[14] Public Law 106-71.

- Reporting missing children to a law enforcement agency in a timely manner,
- Notifying parents when their child is absent or missing from elementary or junior high school,
- Cooperating with law enforcement authorities to provide parents with a fingerprint card or photo identification card of their child,
- Posting DOJ-provided information regarding missing children,
- Requiring principals to check missing children bulletins,
- Placing a report of a missing child in front of the missing child's school record,
- Notifying law enforcement upon inquiry of a missing child.

Claimant also contends that reimbursement is required to review the law, prepare and update policies and procedures, and train personnel.

Claimant did not comment on the draft staff analysis.

State Agency Position

The Department of Finance (DOF) "acknowledges" that posting information regarding missing children and placing specified reports in missing children's school records constitute reimbursable state mandates. However, DOF contends the balance of the test claim should be denied.

DOF argues that "urging" schools, in uncodified language, to perform an activity is not a mandate within the meaning of article XIII B, section 6. DOF argues that Statutes 1986, chapter 249 merely "urges" schools to notify parents when their child is absent or missing from school, but does not require it. Similarly, cooperating with law enforcement authorities to provide parents with a fingerprint card or photo identification of their child is simply "urged." And DOF notes that Statutes 1994, chapter 922 only "urges" school principals to check on whether newly enrolling or transferring pupils resemble those listed as missing in DOJ bulletins.

According to DOF, to the extent that schools choose to conduct activities not statutorily required, the appropriate reimbursement mechanism is revenue limit funding, which provides an average of about $140,000 annually for each 20-student classroom.

Further, DOF opposes reimbursement for costs associated with reporting missing children to law enforcement in a timely manner because the statute specifically states no reimbursement is required by the act. Finally, DOF argues that a plain reading of the language in the test claim legislation provides for no mandate associated with reviewing the law, preparing related policies and procedures, or providing related training. DOF believes that determination of exactly which billable activities are deemed necessary for implementation of statutory requirements is most appropriately made during the parameters and guidelines phase of the test claim.

DOF did not comment on the draft staff analysis, and no other state agencies commented on the test claim.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[15] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[16] "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."[17] 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.[18] 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.[19]

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.[20] 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

---

[15] Article XIII B, section 6, subdivision (a), (amended by Proposition 1A in November 2004) provides:

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

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

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

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

[19] *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 Dist. v. Honig* (1988) 44 Cal.3d 830, 835 *(Lucia Mar)*.

[20] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

legislation.[21] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[22]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[23]

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.[24] 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."[25]

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6?
- Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

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

A. Does the test claim legislation impose a state-mandated activity on school districts?

In order to be subject to article XIII B, section 6 of the California Constitution, the test claim legislation must impose a state-mandated activity on a local agency or school district.[26]

Post missing children bulletins (§ 38139): This section, enacted as part of the Davis-Grisham Act (Stats. 1986, ch. 249), requires public primary and secondary schools to post DOJ-provided missing children information in appropriate areas. It reads:

---

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

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

[23] *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.

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

[25] *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.

[26] *Kern High School Dist., supra,* 30 Cal.4th, 727, 741.

(a) Public primary schools *shall post* at an appropriate area restricted to adults information regarding missing children provided by [DOJ] pursuant to Section 14208 of the Penal Code.

(b) Public secondary schools *shall post* at an appropriate area information regarding missing children provided by [DOJ] pursuant to Section 14208 of the Penal Code. [Emphasis added.]

To determine whether section 38139 mandates an activity, the Commission, like a court interpreting a statute, seeks to ascertain the legislative intent to give effect to the statute's purpose, "being careful to give the statute's words their plain, commonsense meaning."[27] Moreover, "if the language of a statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary."[28] Under Education Code section 75, the word "shall" is mandatory and "may" is permissive. Therefore, the Commission finds that because section 38139 states the schools "shall post" the specified information, the test claim statute imposes a state-mandated activity on public primary and secondary schools.

Notice on school record and to law enforcement (§ 49068.6): This statute (added by Stats. 1999, ch. 832) reads as follows:

(a) Any law enforcement agency responsible for the investigation of a missing child shall inform the school district, other local educational agency, or private school, in which the child is enrolled, that the child is missing. The notice shall be in writing, shall include a photograph of the child if a photograph is available, and shall be given within 10 days of the child's disappearance.

(b) *Every school notified* pursuant to this section *shall place a notice* that the child has been reported missing on the front of each missing child's school record. For public schools this shall be in addition to the posting requirements set forth in Section 38139.

(c) Local law enforcement agencies may establish a process for informing local schools about abducted children pursuant to this section.

(d) If a school receives a record inquiry or request from any person or entity for a missing child about whom the school has been notified pursuant to this section, *the school shall immediately notify the law enforcement authorities* who informed the school of the missing child's status. [Emphasis added.]

Subdivision (b) of this section requires that every school notified of a missing child place a notice that the child has been reported missing on the front of the missing child's school record. Subdivision (d) requires the school to notify law enforcement if a school receives a record inquiry for a missing child about whom the school has been notified. As with the statutes discussed above, this provision uses the mandatory word "shall."[29] Therefore, the Commission finds that subdivisions (b) and (d) of section 49068.6 impose state-mandated activities on schools.

---

[27] *Bonnell v. Medical Board of California* (2003) 31 Cal.4th 1255, 1261.

[28] *Ibid.*

[29] Education Code section 75.

Notify parents and cooperate with law enforcement (Stats. 1986, ch. 249, § 14): This section, an uncodified portion of the Davis-Grisham Act, reads:

> SEC. 14. The Legislature *urges* school districts to implement programs to notify parents when their child is absent from elementary or junior high school.[30] The Legislature also *urges* school districts to cooperate with local law enforcement authorities, the Department of Justice, or appropriate nonprofit organizations approved by the Department of Justice which develop optional programs to provide interested parents with a fingerprint card or photo identification card of their child. [Emphasis added.]

The Commission interprets statutes to give them their plain meaning.[31] "Urge" means:

1. To force or drive forward or onward; impel.
2. To entreat earnestly and often repeatedly; exhort.
3. To advocate earnestly the doing, consideration, or approval of; press for: *urge passage of the bill; a speech urging moderation.*[32]

These definitions make clear that "urge" is not the same as "require," which the Legislature could have expressed by using the mandatory word "shall."[33] In sum, the plain meaning of "urge" indicates that it is merely advisory and leaves discretion with school officials. If a school district's decision to engage in an activity is discretionary, there is no state-mandated program.[34] Therefore, the Commission finds that based on its plain meaning, section 14 of Statutes 1986, chapter 249 does not impose a state-mandated activity.

Check transfer pupils (§ 49068.5): This section, part of the Davis-Grisham Act, reads:

> 49068.5. Upon the initial enrollment of a pupil in a public or private elementary school; or whenever an elementary school pupil (a) transfers from one school district to another, (b) transfers to an elementary school within the same district, (c) transfers from one private elementary school to another, (d) transfers from a private elementary school to a public elementary school, or (e) transfers from a public elementary school to a private elementary school, *the principal* of the school that the child enters or to which he or she transfers *is urged to check* to see if the child resembles a child listed as missing by the bulletins provided by the Department of Justice pursuant to Section 14201 of the Penal Code. [Emphasis added.]

---

[30] Schools are also required to notify a parent if a pupil is classified as a truant. (Ed. Code, § 48260.5).

[31] *Bonnell v. Medical Board of California, supra,* 31 Cal.4th 1255, 1261.

[32] American Heritage Dictionary of the English Language (4th ed. 2000). See <http://dictionary.reference.com/search?q=urge.> as of November 19, 2004.

[33] Education Code section 75.

[34] *Kern High School District, supra,* 30 Cal.4th 727, 742.

Again, the Commission determines legislative intent by interpreting statutes as to their plain meaning.[35] As stated above, the plain meaning of "urge' is not the same as "to require," which the Legislature could have expressed by using "shall."[36] So the plain meaning of the statute indicates that checking the transfer pupils against the DOJ bulletins is a discretionary activity. If a school district activity is discretionary, there is no state mandate.[37]

The legislative history of this provision also demonstrates that section 49068.5 is not mandatory.

The July 1, 1985 version of the Davis-Grisham Act (Assem. Bill No. 606) amended section 49068.5 to expressly require school officials to check DOJ bulletins upon the transfer or enrollment of a new student. The March 10, 1986 version, however, amended this section to "urge" the principal to check DOJ bulletins. The July 1, 1985 version reads:

> SEC. 4. Section 49068.5 is added to Education Code, to read: 49068.5. Whenever a pupil transfers from one school district to another, or to a school within the same district, or transfers from a private school to a school district within the state, an appropriate school official *shall check* to see if that child resembles a child listed as missing by bulletins provided by the Department of Justice pursuant to Section 11114.1 of the Penal Code. [Emphasis added.]

The March 10, 1986 version of the bill amended this section to its current form:

> 49068.5. Upon the initial enrollment of a pupil in a public or private elementary school ... the principal of the school which the child enters or to which he or she transfers is *urged to check* to see if the child resembles a child listed as missing by the bulletins provided by the Department of Justice pursuant to subdivision (f) of Section 11114 of the Penal Code. [Emphasis added.]

Revisions to a bill may properly be considered in construing the statutory language.[38] Moreover, rejection of a specific provision contained in an act as originally introduced is most persuasive that the act should not be interpreted to include what was left out.[39] Since the July 1, 1985 version of the bill required school officials to check DOJ bulletins, but was amended in March 1986 to "urge" principals to check the bulletins, essentially making the activity discretionary, checking DOJ bulletins should not be interpreted as a required activity. Therefore, the Commission finds that section 49068.5 does not impose a state-mandated activity on schools.

Report missing children (§ 49370): This section, enacted by Statutes 1999, chapter 1013, reads:

> 49370. The Legislature hereby *declares its intent in enacting this article to require* that specified persons, including school teachers, school administrators, school aides, school playground workers, and school bus drivers, report missing

---

[35] *Bonnell v. Medical Board of California, supra,* 31 Cal.4th 1255, 1261.

[36] Education Code section 75.

[37] *Kern High School District, supra,* 30 Cal.4th 727, 742.

[38] *Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 436, in which the court considered the Legislature's replacement of the word "shall" in a statute with "may" in the enacted version.

[39] *Bollinger v. San Diego Civil Service Comm.* (1999) 71 Cal.App.4th 568, 575.

children to a law enforcement agency in a timely manner, in order to provide those children a necessary level of protection when they are at serious risk. [Emphasis added.]

Again, the Commission ascertains the legislative intent to give effect to the statute's purpose, "being careful to give the statute's words their plain, commonsense meaning."[40] Moreover, "if the language of a statute is not ambiguous, the plain meaning controls and resort to extrinsic sources to determine the Legislature's intent is unnecessary."[41] A first glance at the statutory language shows that "shall" was not used, tending to indicate that the provision is not mandatory.[42]

However, section 49370 is ambiguous, since emphasizing the Legislature's "intent to require" would make it a mere statement of legislative intent, whereas emphasizing the word "require" alone could indicate a mandatory meaning. Therefore, to interpret a statute that is susceptible of more than one reasonable interpretation, it is necessary to consult extrinsic sources, including the legislative history.[43]

The legislative history indicates that as introduced, Senate Bill No. 570 added section 14250 to the Penal Code. Staff of the Senate Public Safety Committee, in analyzing the April 20, 1999 version of the bill, raised the following issues:

> [T]his bill would enact legislative intent in the Penal Code to require certain school-related personnel to report missing children to law enforcement in a timely manner. The bill contains no other language, and no penalty for the failure to do so. In the absence of additional language, it is unclear what the effect of this provision would be. For example, would this language enact mandated reporting obligations? If not, what would be its function in the Penal Code? Since the language is proposed to be inserted into the Penal Code, is it the author's intent that criminal penalties would be enacted at some point to enforce this mandate?[44]

The bill was amended on April 27, 1999 (the next version after the Public Safety Committee analysis) to remove this provision from the Penal Code and put it in Education Code section 49370. That same version also removed the proposed Penal Code title: "Title 12.5. Mandatory Reporting of Missing Children, Dependent Adults, and Persons At Risk" and inserted the following Education Code title: "Article 6. Reporting of Missing Children." Although a heading is not part of the statute,[45] chapter and section headings may be considered to determine legislative intent and are entitled to considerable weight.[46] Therefore, removal from the Penal

---

[40] *Bonnell v. Medical Board of California, supra,* 31 Cal.4th 1255, 1261.

[41] *Ibid.*

[42] Education Code section 75 states that "shall" is mandatory.

[43] *Granberry v. Islay Investment* (1995) 9 Cal.4th 738, 744.

[44] Senate Committee on Public Safety, Analysis of Senate Bill No. 570 (1999-2000 Reg. Sess.) as introduced, page 6.

[45] Education Code section 5.

[46] *People v. Hull* (1991) 1 Cal. 4th 266, 272.

Code, lack of penalties for noncompliance, and removing the word "mandatory" from the heading title all indicate the legislative intent that the provision not be mandatory.[47]

The Legislative Counsel's Digest also indicates that the provision is not mandatory,[48] stating: "This bill would declare the intent of the Legislature regarding the reporting by, school personnel, to a law enforcement agency of missing children as specified." The Digest consistently calls this provision a declaration of legislative intent on all versions of the bill, through three sets of amendments.

Finally, the author stated the purpose of section 49370, as quoted in a bill analysis:

> [W]e want to make it clear to school personnel that the best way to locate a missing child is to notify law enforcement in a timely manner that the child is missing. . . There have been incidences in the district where a child who was language impaired got on the wrong school bus. It was several hours after the school realized that the child was missing and could not be located before law enforcement was called. Within a very short time, law enforcement located and returned the child.[49]

Wanting to make clear to school personnel the best way to locate a missing child, as the author indicates, does not require them to do so. Therefore, based on the language and legislative history of section 49370, the Commission finds that it does not impose a state-mandated activity on schools.

B. Is the test claim legislation a program under article XIII B, section 6?

The portions of the test claim statute that are mandates, and that will be further analyzed are: (1) section 38139, which requires posting information from DOJ regarding missing children, and (2) section 49068.6, which requires schools to place a notice that the child has been reported missing on the front of each missing child's school record, and requires schools to immediately notify law enforcement if they receive a record inquiry for a missing child about whom the school has been notified.

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

---

[47] *Bollinger v. San Diego Civil Service Comm., supra,* 71 Cal.App.4th 568, 575.

[48] *Woodbury v. Brown-Dempsey, supra,* 108 Cal.App.4th 421, 436, which also considered the Legislative Counsel's Digest in interpreting a statute. However, the Legislative Counsel's Digest is not determinative as to whether there is a reimbursable state-mandated program. Government Code section 17575; *City of San Jose v. State of California, supra,* 45 Cal.App.4th 1802, 1817.

[49] Senate Committee on Public Safety, Analysis of Senate Bill No. 570 (1999-2000 Reg. Sess.) as introduced, page 6. As a statement in a bill analysis, this is part of the legislative history.

residents and entities in the state.[50] Only one of these findings is necessary to trigger article XIII B, section 6.[51]

The relevant parts of sections 38139 and 49068.6 require posting missing children information at schools, placing a notice of the missing child on the child's school record, and notifying law enforcement if the school receives a record inquiry for a missing child. The purpose of these activities is to help locate missing children, which is a service to the public. Moreover, sections 38139 and 49068.6 contain unique requirements imposed on school districts that do not apply generally to all residents and entities of the state. Therefore, the Commission finds the test claim statute constitutes a "program" within the meaning of article XIII B, section 6.

Issue 2: Does the test claim legislation impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution?

To determine if the "program" is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before enacting the test claim legislation.[52]

Post missing children bulletins (§ 38139, subds. (a) & (b)): Subdivision (a) states that "public primary schools shall post at an appropriate area restricted to adults information regarding missing children" provided by the DOJ. Subdivision (b) imposes a similar posting requirement on "public secondary schools." Prior law imposed no such requirement.[53] Therefore, the Commission finds that it is a new program or higher level of service for school districts to post missing children bulletins in public primary and secondary schools.

Notice on school record and to law enforcement (§ 49068.6, subds. (b) & (d)): Subdivision (b) of this section requires the posting of a notice on a missing child's student record. Prior law had no such posting requirement. Subdivision (d) of this section requires the school to notify law enforcement if the school receives an inquiry about a missing child. Similarly, prior law did not require such notification. Therefore, the Commission finds that it is a new program or higher level of service for schools to post notices on missing children's records and notify law enforcement as specified.

Issue 3: Does the test claim legislation impose "costs mandated by the state" on school districts within the meaning of Government Code sections 17514 and 17556?

In order for the activities listed above to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, two criteria must be met. First, the

---

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

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

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

[53] Statutes 1986, chapter 249 also requires state-leased buildings (Gov. Code, § 14685, subd. (b)) and roadside rests (Sts. & Hy. Code, § 221) be made available for posting missing children notices.

activities must impose costs mandated by the state.[54] Second, no statutory exceptions as 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.

Government Code section 17556, as amended January 1, 2005 (Stats. 2004, ch. 895), provides:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that:
>
> (a) The claim is submitted by a local agency or school district that requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district that requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.
>
> (b) The statute or executive order affirmed for the state a mandate that had been declared existing law or regulation by action of the courts.
>
> (c) The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.
>
> (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
>
> (e) The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
>
> (f) The statute or executive order imposed duties that were expressly included in a ballot measure approved by the voters in a statewide or local election.
>
> (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

---

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

The Commission finds that none of these exceptions in Government Code section 17556 apply to this test claim.

In its test claim, claimant states that it would incur costs of over $200 per year, which was the standard under Government Code section 17564, subdivision (a) when the claim was filed.[55] Therefore, the Commission finds that Education Code sections 38139 and 49068.6, subdivisions (b) and (d), impose "costs mandated by the state" within the meaning of Government Code section 17514 and 17556.

CONCLUSION

The Commission finds that the test claim legislation imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 to perform the following activities:

- For public primary and secondary schools to post information regarding missing children in appropriate areas (§ 38139, subds. (a) & (b)).
- For schools notified of a missing child to post a notice that the child has been reported missing on the front of the missing child's school record. (§ 49068.6, subd. (b)).
- For schools to notify law enforcement if the school receives a record inquiry about a missing child. (§ 49068.6, subd. (d)).

The Commission finds that all other statutes and executive orders in the test claim[56] are not reimbursable state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

---

[55] Currently, the claim must exceed $1,000 in costs (Gov. Code, § 17564, subd. (a)).

[56] Claimant pled other activities, such as, reviewing the law, preparing and updating policies and procedures to comply with new law, and training personnel. Because these activities are not in the test claim statutes, they would be more appropriately considered during the parameters and guidelines phase to determine, "the most reasonable methods of complying with the mandate." California Code of Regulations, title 2, section 1183.1, subdivision (a)(4).

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

February 2, 2005, I served the:

Adopted Statement of Decision
Missing Children Reports, 01-TC-09
San Jose Unified School District, Claimant
Education Code Sections 38139, 49068.5, 49068.6, 49370
Statutes 1986, Chapter 249, Statutes 1994; Chapter 922, Statutes 1996;
Chapter 277, Statutes 1999; Chapters 832 and 1013

by placing a true copy thereof in an envelope addressed to:

Mr. Keith Petersen, President
SixTen and Associates
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

State Agencies and Interested Parties (See attached mailing list);

and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully paid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 2, 2005 at Sacramento, California.

Victoria Soriano

VICTORIA SORIANO