

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 33126 and 33126.1;  
Statutes 1997, Chapter 912; Statutes 2000,  
Chapter 996;

Filed on March 16, 2001, and  
Amended May 10, 2001,

By Empire Union School District, Claimant  
and

Education Code Sections 33126, 33126.1, and  
41409; Statutes 2000, Chapter 996; Statutes  
2001, Chapters 159 and 734; Statutes 2002,  
Chapter 1168;

Filed on June 23, 2003,

By Bakersfield City School District and  
Sweetwater Union High School District,  
Co-claimants.

No. 00-TC-09/00-TC-13; 02-TC-32

***School Accountability Report Cards II and III***

STATEMENT OF DECISION PURSUANT  
TO GOVERNMENT CODE SECTION 17500  
ET SEQ.; CALIFORNIA CODE OF  
REGULATIONS, TITLE 2, DIVISION 2,  
CHAPTER 2.5, ARTICLE 7

*(Adopted on March 25, 2004)*

**STATEMENT OF DECISION**

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

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

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Date

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*(Adopted on March 25, 2004)*

**STATEMENT OF DECISION**

The Commission on State Mandates (Commission) heard and decided this consolidated test claim during a regularly scheduled hearing on March 25, 2004. David Scribner appeared on behalf of claimant, Empire Union School District. Michael Wilkening and Lenin Del Castillo 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 at the hearing by a vote of 4-1.

**BACKGROUND**

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

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

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

Prior Decision: *School Accountability Report Cards*

*School Accountability Report Cards* (97-TC-21), was a previous test claim heard and approved by the Commission. The claim, filed on December 31, 1997, by Bakersfield City School District and Sweetwater Union High School District, alleged a reimbursable state mandate for Education Code sections 33126, 35256, 35256.1, 35258, 41409, and 41409.3, as added or amended by Statutes 1989, chapter 1463; Statutes 1992, chapter 759; Statutes 1993, chapter 1031; Statutes 1994, chapter 824; and Statutes 1997, chapters 912 and 918.

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

The Commission finds the following to be state mandated activities and therefore, reimbursable under section 6, article XIII B of the California Constitution and Government Code section 17514. Reimbursement would include direct and indirect costs to compile, analyze, and report the specific information listed below in a school accountability report card.

The Commission concludes that reimbursement for inclusion of the following information in the school accountability report card begins on July 1, 1996:

- Salaries paid to schoolteachers, school site principals, and school district superintendents.
- Statewide salary averages and percentages of salaries to total expenditures in the district's school accountability report card.
- "The degree to which pupils are prepared to enter the work force."
- "The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per year required by state law, separately stated for each grade level."
- "The total number of minimum days, . . . , in the school year."
- Salary information provided by the Superintendent of Public Instruction.

The Commission concludes that reimbursement for inclusion of the following information in a school accountability report card begins on January 1, 1998:

- Results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period, including pupil achievement by grade level as measured by the statewide assessment.
- The average verbal and math Scholastic Assessment Test (SAT) scores for schools with high school seniors to the extent such scores are provided to the school and the average percentage of high school seniors taking the exam for the most recent three-year period.

- The one-year dropout rate for the schoolsite over the most recent three-year period.
- The distribution of class sizes at the schoolsite by grade level, the average class size, and the percentage of pupils in kindergarten and grades 1-3, inclusive, participating in the Class Size Reduction Program for the most recent three-year period.
- The total number of the school's credentialed teachers, the number of teachers relying on emergency credentials, and the number of teachers working without credentials for the most recent three-year period.
- Any assignment of teachers outside of their subject area of competence for the first two years of the most recent three-year period.
- The annual number of schooldays dedicated to staff development for the most recent three-year period.
- The suspension and expulsion rates for the most recent three-year period.

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

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<sup>1</sup> To the extent the test claim analysis for *School Accountability Report Cards II and III* differs from the decision in the original claim, prior Commission decisions are not controlling. The failure of a quasi-judicial agency to consider prior decisions is *not* a violation of due process and does not constitute an arbitrary action by the agency. (*Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772.) In *Weiss*, the plaintiffs brought mandamus proceedings to review the refusal of the State Board of Equalization to issue them an off-sale beer and wine license at their premises. Plaintiffs contended that the action of the board was arbitrary and unreasonable because the board granted similar licenses to other businesses in the past. The California Supreme Court disagreed with the plaintiffs' contention and found that the board did *not* act arbitrarily. The Court stated, in pertinent part, the following:

[P]laintiffs argument comes down to the contention that because the board may have erroneously granted licenses to be used near the school in the past it must continue its error and grant plaintiffs' application. That problem has been discussed: Not only does due process permit omission of reasoned administrative opinions but it probably also permits substantial deviation from the principle of stare decisis. Like courts, agencies may overrule prior decisions or practices and may initiate new policy or law through adjudication. (*Id.* at p. 776.)

Thus, the Commission is not bound by its prior decisions. Rather, the merits of a test claim must be analyzed individually. Commission decisions under article XIII B, section 6 are not arbitrary or unreasonable as long as the decision strictly construes the Constitution and the statutory language of the test claim statute, and does not apply section 6 as an equitable remedy. (*City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816-1817; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280-1281.) The analysis in this test claim complies with these principles.

The parameters and guidelines were discussed at the July 23, 1998 hearing, and the item was continued. The Commission adopted parameters and guidelines for *School Accountability Report Cards* at the August 20, 1998 hearing.

### **Claimants' Positions**

Co-claimants Bakersfield City School District and Sweetwater Union High School District's [hereafter Sweetwater] test claim alleges new reimbursable activities are required by amendments to Education Code section 33126 by Statutes 2000, chapter 996 and Statutes 2002, chapter 1168, for calculating, determining and including new components in the School Accountability Report Card. In addition, claimant alleges Statutes 2000, chapter 996, amending Education Code section 33126.1 will result in costs of training school personnel to either use the School Accountability Report Card template developed by the California Department of Education (CDE), or for training school personnel who do not use the template regarding "standard definitions" to be used when preparing the School Accountability Report Card.

Claimant, Empire Union School District [hereafter Empire Union], made substantially similar test claim allegations regarding the amendments to Education Code sections 33126 and 33126.1 by Statutes 2000, chapter 996. Claimant also included allegations regarding "new" activities from Statutes 1997, chapter 912; that statute was part of the original *School Accountability Report Cards* test claim decision.

Claimants Empire Union and Sweetwater each filed rebuttal comments disagreeing with the draft staff analysis.

### **State Agency's Position**

DOF's June 29, 2000 response to Empire Union's original and amended test claim allegations states "concerns regarding the activities listed by the claimant[] as reimbursable state-mandated costs," specifically that much of the information required to be included on the School Accountability Report Card is provided by the state or is already compiled by the school district. Regarding the assertion that training is required for use of the state template pursuant to Education Code section 33126.1, DOF asserts that the statute "does not require such training, and the use of the state-adopted template is voluntary." DOF's response to Sweetwater's test claim allegations, dated September 24, 2003, reiterates: "the incremental costs of including that information in an accountability report card should be minimal."

## COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution<sup>2</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>3</sup> “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.”<sup>4</sup> A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.<sup>5</sup> In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.<sup>6</sup>

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.<sup>7</sup> To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim

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<sup>2</sup> Article XIII B, section 6 provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

<sup>3</sup> *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

<sup>4</sup> *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

<sup>5</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that “activities undertaken at the option or discretion of a local government entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds - even if the local entity is obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.” The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or “draconian” consequences. (*Id.*, at p. 754.)

<sup>6</sup> *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836.

<sup>7</sup> *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

legislation.<sup>8</sup> Finally, the newly required activity or increased level of service must impose costs mandated by the state.<sup>9</sup>

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.<sup>10</sup> 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.”<sup>11</sup>

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

Education Code Section 33126, As Amended by Statutes 1997, Chapter 912:

As a preliminary issue, Empire Union’s claim includes allegations of costs for “activities associated with ensuring that all parents receive a copy of the SARC [School Accountability Report Card] and making administrators and teachers available to answer any questions regarding the SARC.” These activities are identified as being imposed by the amendment of Education Code section 33126 by Statutes 1997, chapter 912. The issue of whether this legislation imposed a reimbursable state mandate was already heard and decided by the Commission in *School Accountability Report Cards*, (97-TC-21). Claimant Sweetwater, in comments dated November 15, 2003, offers the following support for Empire Union’s current claim:

After reviewing the original SARC test claim, submitted on or about December 30, 1997, the Commission’s Statement of Decision, issued on or about April 23, 1998, and as a co-claimant on the original test claim, I am convinced that the issues of (1) ensuring that all parents receive a copy of the SARC and (2) making administrators and teachers available to answer any questions regarding the SARC were overlooked and not included in the original submission and therefore were neither approved or denied by the commission.

Under Government Code section 17521, “‘test claim’ means the first claim, including claims joined or consolidated with the first claim, filed with the commission alleging that *a particular statute* or executive order imposes costs mandated by the state.” [Emphasis added.] Empire Union asserts in the amended test claim filing: “However, section 17521 does not preclude a claimant from filing a test claim alleging that a statute or executive order that was included in a prior test claim imposes activities not previously claimed.” The Commission finds that claimant misapprehends the statutory meaning of Government Code section 17521.

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<sup>8</sup> *Lucia Mar, supra*, 44 Cal.3d 830, 835.

<sup>9</sup> *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

<sup>10</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>11</sup> *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280.

A claimant has the opportunity upon filing a test claim to identify and allege *all* activities imposed by a particular statute or executive order.<sup>12</sup> Comment periods are available to all members of the public, including interested parties.<sup>13</sup> Comments, additional filings, and/or hearing testimony identifying other reimbursable activities are permitted during the test claim phase.<sup>14</sup> In addition, every Commission hearing is subject to the notice and agenda requirements of the Bagley-Keene Open Meetings Act, pursuant to Government Code section 11120 et seq. Thus, the test claim proceedings provide adequate due process to the entire claimant community.

“[D]ue process is the opportunity to be heard at a meaningful time and in a meaningful manner.” (*Los Angeles Police Protective League v. City of Los Angeles* (2002) 102 Cal.App.4th 85, 91.) Despite this clear statement of the law, claimant Empire Union’s comments, dated October 27, 2003, argue: “In reality, the test claim process provides adequate due process for the claimants currently represented before the Commission – a number on average, that is hardly significant to ensure all districts are informed and their interests protected.” The Commission asserts that the choice of many potential claimants to not get involved in the test claim process prior to the reimbursement phase is immaterial to due process considerations. The test claim process is open and available to all parties and interested parties who seek to participate.

In *Kinlaw v. State of California*, *supra*, 54 Cal.3d at page 333, the California Supreme Court declared that the applicable Government Code sections “create an administrative forum for resolution of state mandate claims, and establishes procedures which exist for the express purpose of avoiding multiple proceedings, judicial and administrative, addressing the same claim that a reimbursable state mandate has been created.” In this case, the claim that Education Code section 33126, as amended by Statutes 1997, chapter 912, imposed a reimbursable state mandate was already filed and heard, and the Commission adopted a final Statement of Decision on April 23, 1998. Other than the reconsideration and writ of mandate provisions of Government Code section 17559, no further issues on the merits may be raised before the Commission following the adoption of a statement of decision on a particular statute or executive order.

Therefore, Empire Union’s claim for reimbursement of costs for “activities associated with ensuring that all parents receive a copy of the SARC and making administrators and teachers available to answer any questions regarding the SARC” pursuant to Education Code section 33126, as amended by Statutes 1997, chapter 912, is denied based upon the plain meaning of Government Code section 17521, and the doctrine of estoppel,<sup>15</sup> and is not included in the following analysis as part of the “test claim legislation.”

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<sup>12</sup> California Code of Regulations, title 2, section 1183, subdivision (d).

<sup>13</sup> California Code of Regulations, title 2, sections 1182.2, subdivision (b) and 1183.02.

<sup>14</sup> Government Code section 17555; California Code of Regulations, title 2, sections 1183, 1183.07 and 1187.6.

<sup>15</sup> “The doctrine of collateral estoppel bars the relitigating of issues which were previously resolved in an administrative hearing by an agency acting in a judicial capacity. (*People v. Sims* (1982) 32 Cal.3d 468, 478-479.)” *Knickerbocker v. City of Stockton* (1988) 199 Cal.App.3d 235, 242.

Education Code Sections 33126, 33126.1 and 41409 As Amended By Statutes 2000, Chapter 996; Statutes 2001, Chapters 159 and 734; and Statutes 2002, Chapter 1168:

In order for the remaining test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” In *County of Los Angeles v. State of California*, the California Supreme Court defined the word “program” within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.<sup>16</sup> The court has held that only one of these findings is necessary.<sup>17</sup>

The Commission finds that providing a School Accountability Report Card imposes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. First, it constitutes a program that carries out the governmental function of providing a service to the public because it requires school districts to make a document available to the public that is designed to “promote a model statewide standard of instructional accountability and conditions for teaching and learning.”<sup>18</sup> The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.<sup>19</sup>

The test claim legislation also satisfies the second test that triggers article XIII B, section 6, because the test claim legislation requires school districts to engage in administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Accordingly, the Commission finds that providing a School Accountability Report Card constitutes a “program” and, thus, is subject to article XIII B, section 6 of the California Constitution.

However, pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), ballot measures adopted by the voters in a statewide election do not impose reimbursable state mandates. As discussed below, to the extent that the claimed amendments to the Education Code are a restatement of what was required by the voters in enacting Proposition 98, no program, or new program or higher level of service, can be found.

**Issue 2: Does the test claim legislation impose a new program or higher level of service within an existing program within the meaning of the California Constitution, article XIII B, section 6, and impose costs mandated by the state pursuant to Government Code section 17514?**

Amendments to Education Code sections 33126, 33126.1, and 41409, as asserted by the claimants, are analyzed below for the imposition of a new program or higher level of service on school districts within the meaning of article XIII B, section 6.

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<sup>16</sup> *County of Los Angeles, supra*, 43 Cal.3d at page 56.

<sup>17</sup> *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

<sup>18</sup> Education Code section 33126, as added to the Education Code by Proposition 98.

<sup>19</sup> *Long Beach Unified School Dist., supra*, 225 Cal.App.3d at page 172 states “although numerous private schools exist, education in our society is considered to be a peculiarly governmental function ... administered by local agencies to provide service to the public.”

Education Code Section 33126.

Section 33126 was added to the Education Code by Proposition 98, approved by the electors, effective November 9, 1988:

In order to promote a model statewide standard of instructional accountability and conditions for teaching and learning, the Superintendent of Public Instruction shall by March 1, 1989, develop and present to the Board of Education for adoption a statewide model School Accountability Report Card.

(a) The model School Accountability Report Card shall include, but is not limited to, assessment of the following school conditions:

- (1) Student achievement in and progress toward meeting reading, writing, arithmetic and other academic goals.
- (2) Progress toward reducing drop-out rates.
- (3) Estimated expenditures per student, and types of services funded.
- (4) Progress toward reducing class sizes and teaching loads.
- (5) Any assignment of teachers outside their subject areas of competence.
- (6) Quality and currency of textbooks and other instructional materials.
- (7) The availability of qualified personnel to provide counseling and other student support services.
- (8) Availability of qualified substitute teachers.
- (9) Safety, cleanliness, and adequacy of school facilities.
- (10) Adequacy of teacher evaluations and opportunities for professional improvement.
- (11) Classroom discipline and climate for learning.
- (12) Teacher and staff training, and curriculum improvement programs.
- (13) Quality of school instruction and leadership.

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

Proposition 98 also added Education Code section 35256, as follows:

The governing board of each school district maintaining an elementary or secondary school shall by September 30, 1989, or the beginning of the school year develop and cause to be implemented for each school in the school district a School Accountability Report Card.

(a) The School Accountability Report Card shall include, but is not limited to, the conditions listed in Education Code Section 33126.

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

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

Pursuant to article XIII B, section 6, of the California Constitution, and Government Code section 17556, subdivision (f), ballot measures adopted by the voters in a statewide election do not impose reimbursable state mandates. Education Code section 33126, as amended by Statutes 1993, chapter 1031, Statutes 1994, chapter 824, and Statutes 1997, chapter 912, was already heard and decided as part of the *School Accountability Report Cards (97-TC-21)* test claim. The pertinent portions of Education Code section 33126, as amended by Statutes 2000, chapter 996, effective September 30, 2000, are indicated with underline below. In addition, Statutes 2002, chapter 1168, effective September 30, 2002, amended the section by adding subdivision (b)(26).

(a) The school accountability report card shall provide data by which parents can make meaningful comparisons between public schools enabling them to make informed decisions on which school to enroll their children.

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

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

(B) Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals, including results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period.

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

(D) Secondary schools with high school seniors shall list both the average verbal and math Scholastic Assessment Test scores to the extent provided to the school and the percentage of seniors taking that exam for the most recent three-year period.

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

[¶]...[¶]

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

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

[¶]...[¶]

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

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

(19) Whether a school qualified for the Immediate Intervention Underperforming Schools Program pursuant to Section 52053 and whether the school applied for, and received a grant pursuant to, that program.

(20) Whether the school qualifies for the Governor's Performance Award Program.

(21) When available, the percentage of pupils, including the disaggregation of subgroups as set forth in Section 52052, completing grade 12 who successfully complete the high school exit examination, as set forth in Sections 60850 and 60851, as compared to the percentage of pupils in the district and statewide completing grade 12 who successfully complete the examination.

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

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

(24) Whether the school has a college admission test preparation course program.

(26) When available from the State Department of Education, the claiming rate of pupils who earned a Governor's scholarship award pursuant to subdivision (a) of Section 69997 for the most recent two year period. This paragraph applies only to schools that enroll pupils in grades nine, ten or eleven.<sup>20</sup>

Claimants allege a reimbursable state-mandated program for calculating, determining and including all amended components in the School Accountability Report Card. DOF responds that much of the information is available through the CDE website or is already accumulated by

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<sup>20</sup> Subdivision (b)(26) was added by Statutes 2002, chapter 1168; all other indicated amendments were made by Statutes 2000, chapter 996. There is no subdivision (b)(25).

school districts for other purposes; consequently, DOF argues any additional work “should be minimal.”

The claimants contend that amendments to Education Code section 33126 imposed additional activities on school districts, which constitute a higher level of service. In 1987, the California Supreme Court in *County of Los Angeles v. State of California* expressly stated that the term “higher level of service” must be read in conjunction with the phrase “new program.” Both are directed at state-mandated increases in the services provided by local agencies.<sup>21</sup>

In 1990, the Second District Court of Appeal decided the *Long Beach Unified School District* case, which challenged a test claim filed with the Board of Control on executive orders issued by the Department of Education to alleviate racial and ethnic segregation in schools.<sup>22</sup> The court determined that the executive orders did not constitute a “new program” since schools had an existing constitutional obligation to alleviate racial segregation.<sup>23</sup> However, the court found that the executive orders constituted a “higher level of service” because the requirements imposed by the state went beyond constitutional and case law requirements. The court stated in relevant part the following:

The phrase “higher level of service” is not defined in article XIII B or in the ballot materials. [Citation omitted.] A mere increase in the cost of providing a service which is the result of a requirement mandated by the state is not tantamount to a higher level of service. [Citation omitted.] However, a review of the Executive Order and guidelines shows that a higher level of service is mandated because the requirements go beyond constitutional and case law requirements. . . . While these steps fit within the “reasonably feasible” description of [case law], the point is that these steps are no longer merely being suggested as options which the local school district may wish to consider but are required acts. These requirements constitute a higher level of service. We are supported in our conclusion by the report of the Board to the Legislature regarding its decision that the Claim is reimbursable: “Only those costs that are above and beyond the regular level of service for like pupils in the district are reimbursable.”<sup>24</sup>

Thus, in order for the amendments to the School Accountability Report Card legislation to impose a higher level of service, the Commission must find that the state is imposing new required acts or activities on school districts beyond those already required by law.

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

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<sup>21</sup> *County of Los Angeles, supra*, 43 Cal.3d at 56.

<sup>22</sup> *Long Beach Unified School District, supra*, 225 Cal.App.4th 155.

<sup>23</sup> *Id.* at page 173.

<sup>24</sup> *Ibid.*

School Accountability Report Card with the statewide model.<sup>25</sup> This requirement recognizes that the precise details of the model report card are subject to change as education programs change, and that schools are required to make modifications as necessary.

In comments dated October 27, 2003, Empire Union argues that the statutory amendments to the School Accountability Report Cards legislation automatically represent a higher level of service, stating: “why would the Legislature go to such lengths to specifically delineate over a dozen new pieces of information that must be in a SARC if this information was somehow already required to be reported?” However, intent to *change* the law may not always be presumed by an amendment, as suggested by the claimant. The court has recognized that changes in statutory language can be intended to clarify the law, rather than change it.

We assume the Legislature amends a statute for a purpose, but that purpose need not necessarily be to change the law. [Citation.] Our consideration of the surrounding circumstances can indicate that the Legislature made ... changes in statutory language in an effort only to clarify a statute's true meaning. [Citations omitted.]<sup>26</sup>

Thus, the Commission must determine whether the “new pieces of information” identified by the claimant are actually new, or rather a clarification of existing law previously expressed in more general terms.

Education Code section 33126, as added by Proposition 98, required that “The model School Accountability Report Card shall include, *but is not limited to*, assessment of the following school conditions: (1) Student achievement in and progress toward meeting reading, writing, arithmetic and other academic goals,” and “(13) Quality of school instruction and leadership.” These requirements subsume the requirements that school districts report, on “Pupil achievement by grade level, as measured by the standardized testing and reporting programs (STAR),” pursuant to subdivision (b)(1)(A); the number of advanced placement courses offered, pursuant to subdivision (b)(17); Academic Performance Index (API)<sup>27</sup> rankings, pursuant to subdivision (b)(18); whether the school qualifies for the Governor's Performance Award Program based upon API rankings, pursuant to subdivision (b)(20); High School Exit Exam passage rates, when available, pursuant to subdivision (b)(21); the percentage of high school graduates who passed course requirements for entrance to the University of California and the California State University, pursuant to subdivision (b)(23); whether the school offers a college admission test preparation course, pursuant to subdivision (b)(24); and the rate of pupils who earned a

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<sup>25</sup> Empire Union’s comments dispute that the Proposition 98 funding guarantee is an available state-funding source for providing the School Accountability Report Card. On the contrary, there must be a presumed close link between the two, due to the California Constitutional single-subject rule. (Art. II, § 8, subd. (d): “An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.”)

<sup>26</sup> *Western Security Bank v. Superior Court* (1997) 15 Cal.4th 232, 243.

<sup>27</sup> According to the CDE, “The purpose of the API is to measure the academic performance and growth of schools. It is a numeric index (or scale) that ranges from a low of 200 to a high of 1000. A school’s score or placement on the API is an indicator of a school’s performance level.” March 1, 2004: < <http://www.cde.ca.gov/psaa/api/apidescription.htm>>.

Governor's scholarship award,<sup>28</sup> pursuant to subdivision (b)(26). All of these specific reporting requirements quantify student achievement and demonstrate progress towards meeting academic goals, and/or indicate the quality of school instruction.

The requirement of subdivision (b)(2) to include statewide dropout rates, as provided by the CDE, fulfills the purpose of the Proposition 98 requirement that the report card include "(2) Progress toward reducing drop-out rates." The inclusion of statewide drop-out rates to compare to the individual school's drop-out rates "promote[s] a model statewide standard of instructional accountability," as required by Proposition 98.

The new specificity of subdivision (b)(6), that the report card is to provide information on whether the textbooks used by the schools meet state or district standards and the year the textbooks were adopted is within the Proposition 98 requirement to report on the "(6) Quality and currency of textbooks and other instructional materials." The requirement to provide the ratio of textbooks per pupil is within the Proposition 98 requirements to report on the "adequacy of school facilities," the "climate for learning," as well as on the "[q]uality of school instruction."

The requirement that districts report on the "ratio of academic counselors per pupil," pursuant to subdivision (b)(7) is within the Proposition 98 requirement to report on the "(7) The availability of qualified personnel to provide counseling and other student support services."

Subdivision (b)(19) requires districts to report whether a school qualified for the Immediate Intervention/Underperforming Schools Program, "and whether the school applied for, and received a grant pursuant to, that program." Education Code section 52053 provides planning grant funds for under-performing schools, as indicated by API scores. Qualification for the Immediate Intervention/Underperforming Schools Program demonstrates that a school's API scores fall below the 50th percentile. This is within the Proposition 98 requirements to report on student achievement, the quality of student instruction, and on "(13)... curriculum improvement programs." The Commission finds that none of the above information elements required for the School Accountability Report Card impose a new program or higher level of service upon school districts.

In fact, the only alleged new element of the School Accountability Report Card that does not fall within one of the original 13 reporting categories is the requirement that the report card include "Contact information pertaining to any organized opportunities for parental involvement." (Ed. Code, § 33126, subd. (b)(22).) However, as described below, the addition of this minimal information<sup>29</sup> does not rise to the level of a reimbursable "higher level of service" within the meaning discerned by the courts.

In a recent appellate decision, *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4th 1176, 1193-1194, the County sought to vacate a Commission decision that denied a test claim for costs associated with a statute requiring local law enforcement officers to

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<sup>28</sup> Education Code section 69997 provides the Governor's Scholars Program to grant a scholarship to every public high school student demonstrating high academic achievement through the STAR program.

<sup>29</sup> The state model School Accountability Report Card for School Year 2000-2001 has a header: "Opportunities for Parental Involvement," followed by a box showing "Contact Person Name" and "Contact Person Phone Number."

participate in two hours of domestic violence training. The court upheld the Commission's decision that the test claim legislation did not mandate any increased costs and thus no reimbursement was required. Thus, the court concluded:

Based upon the principles discernable from the cases discussed, we find that in the instant case, the legislation does not mandate a "higher level of service." In the case of an existing program, an increase in existing costs does not result in a reimbursement requirement. Indeed, "costs" for purposes of Constitution article XIII B, section 6, does not equal every increase in a locality's budget resulting from compliance with a new state directive. Rather, the state must be attempting to divest itself of its responsibility to provide fiscal support for a program, or forcing a new program on a locality for which it is ill-equipped to allocate funding.

[¶]...[¶]

[M]erely by adding a course requirement to POST's certification, the state has not shifted from itself to the County the burdens of state government. Rather, it has directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.

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

Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. Thus, while there may be a mandate, there are no increased costs mandated by [the test claim legislation].

Likewise here, by requiring the addition of a few lines to the existing school accountability report card, the state has not shifted from itself to schools "the burdens of state government," when "the directive can be complied with by a minimal reallocation of resources." Therefore, the Commission finds no new program or higher level of service was imposed. In addition, the state has not required the expenditure of local property tax funds in order for schools to comply with any revised directives regarding the annual issuance of the School Accountability Report Card.

Assuming, for purposes of analysis, that the claimants did meet their burden of proving a new program or higher level of service for all new information required to be included in the School Accountability Report Card, they have not met their burden of proving costs mandated by the state. The claimants have provided no evidence that the amendments alleged require the expenditure of local tax revenues, rather than the expenditure of school funding provided by the state, or funds available from other sources.<sup>30</sup> A CDE document entitled "2000-01 K-12

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<sup>30</sup> Empire Union's October 27, 2003 rebuttal comments state "that all un-funded mandates have a direct impact on property tax revenue as reallocation of resources is always required." Similarly, Sweetwater's comments dated November 15, 2003, state: "The imposition of a mandate upon an entity will always create a lack of funding simply because entities do not have personnel sitting around waiting for mandates to be imposed."

Education Financial Data”<sup>31</sup> demonstrates that only 21.27% of public school funding comes from property tax revenues. A full 56.67% is from state sources,<sup>32</sup> and the remainder of the funding comes from federal and other sources, including lottery revenue. “[I]t is the expenditure of tax revenues of local governments that is the appropriate focus of section 6.” (*County of Sonoma v. Commission on State Mandates*, *supra*, 84 Cal.App.4th at p. 1283, citing *County of Fresno v. State of California*, *supra*, 53 Cal.3d at p. 487.) “No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes.” (*Redevelopment Agency v. Commission on State Mandates* (1997) 55 Cal.App.4th 976, 987.)

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

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

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

Claimants have not demonstrated that the state funds received through article XVI, sections 8 and 8.5, or any other sources beyond property tax revenue, are unavailable for the claimed additional costs of issuing School Accountability Report Cards. In the absence of that showing, the Commission finds the test claim legislation did not impose costs mandated by the state.

Thus, the Commission finds that Education Code section 33126, as amended by Statutes 2000, chapter 996, and Statutes 2002, chapter 1168 does not impose a new program or higher level of service on school districts, and does not impose costs mandated by the state.

#### Education Code Section 33126.1.

Education Code section 33126.1 primarily gives direction to the CDE to develop a standardized template for the School Accountability Report Card, for optional use by school districts. The code section, as added by Statutes 2000, chapter 996, effective September 30, 2000; amended by

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<sup>31</sup> At <<http://www.cde.ca.gov/fiscal/financial/FingertipFacts01.html>> [as of Mar. 1, 2004.] The CDE is the department statutorily charged with receiving school district and county office of education budget, audit, apportionment, and other financial status reports, pursuant to Education Code section 42129.

<sup>32</sup> Approximately \$31.4 billion for fiscal year 2000-2001.

Statutes 2001, chapter 159, effective January 1, 2002, and Statutes 2002, chapter 1168, effective September 30, 2002, follows, in pertinent part:

(a) The State Department of Education shall develop and recommend for adoption by the State Board of Education a standardized template intended to simplify the process for completing the school accountability report card and make the school accountability report card more meaningful to the public.

(b) The standardized template shall include fields for the insertion of data and information by the State Department of Education and by local educational agencies. When the template for a school is completed, it should enable parents and guardians to compare how local schools compare to other schools within that district as well as other schools in the state.

(c) In conjunction with the development of the standardized template, the State Department of Education shall furnish standard definitions for school conditions included in the school accountability report card. The standard definitions shall comply with the following:

(1) Definitions shall be consistent with the definitions already in place or under the development at the state level pursuant to existing law.

(2) Definitions shall enable schools to furnish contextual or comparative information to assist the public in understanding the information in relation to the performance of other schools.

(3) Definitions shall specify the data for which the State Department of Education will be responsible for providing and the data and information for which the local educational agencies will be responsible.

[¶]...[¶]

(g) The State Department of Education shall annually post the completed and viewable template on the Internet. The template shall be designed to allow schools or districts to download the template from the Internet. The template shall further be designed to allow local educational agencies, including individual schools, to enter data into the school accountability report card electronically, individualize the report card, and further describe the data elements. The State Department of Education shall establish model guidelines and safeguards that may be used by school districts secured access only for those school officials authorized to make modifications.

(j) A school or school district that chooses not to utilize the standardized template adopted pursuant to this section shall report the data for its school accountability report card in a manner that is consistent with the definitions adopted pursuant to subdivision (c) of this section.

[¶]...[¶]

(l) Local educational agencies shall make these school accountability report cards available through the Internet or through paper copies.

(m) The State Department of Education shall monitor the compliance of local educational agencies with the requirements to prepare and to distribute school accountability report cards.

Claimants allege this statute will result in costs of training school personnel to either use the School Accountability Report Card template developed by the CDE, or for training school personnel who do not use the template regarding “standard definitions” to be used when preparing the School Accountability Report Card.

The Commission finds that none of the claimed training activities are expressly required by Education Code section 33126.1.<sup>33</sup> In addition, the plain language of Proposition 98 requires the State to “adopt[] a statewide model School Accountability Report Card.” The standardized template described by Education Code section 33126.1 meets this requirement. Further, in adopting Education Code section 35256, Proposition 98 required that “the governing board of each school district shall compare the content of the school district's School Accountability Report Card to the model School Accountability Report Card adopted by the State Board of Education,” and shall “annually issue a School Accountability Report Card for each school in the school district, publicize such reports, and notify parents or guardians of students that a copy will be provided upon request.”

These requirements are not substantively different from the law of Education Code section 33126.1, which was designed to “to simplify the process for completing the school accountability report card and make the school accountability report card more meaningful to the public,” within the requirements of the original law adopted by the voters when passing Proposition 98. The specific new requirements of Education Code section 33126.1 are directed to the CDE, not to local school districts. Thus, the Commission finds Education Code section 33126.1 does not impose a new program or higher level of service on school districts, and does not impose costs mandated by the state.

Education Code Section 41409.

Education Code section 41409 was added by Statutes 1989, chapter 1463 and amended by Statutes 1992, chapter 759. Further amended by Statutes 2001, chapter 734 (A.B. 804), effective October 11, 2001. Sweetwater alleges a reimbursable state-mandated program as to the amendment by Statutes 2001, chapter 734. The statute requires the state Superintendent of Public Instruction to “determine the statewide average percentage of school district expenditures that are allocated to the salaries of administrative personnel, ... [and] also shall determine the statewide average percentage of school district expenditures that are allocated to the salaries of teachers.” Subdivision (c) provides:

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

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<sup>33</sup> Sweetwater’s November 15, 2003 comments state: “Claimant agrees that training is not specifically referred to in the legislation, however, the California Safe School Assessment process is a reasonable example of what happens when definitions developed by others are distributed without training, and those who did not receive any training are then left to determine what the definitions are going to be.”

This statute, as amended by Statutes 1992, chapter 759, was the subject of the original *School Accountability Report Cards* test claim, and was found in the Commission's April 23, 1998 Statement of Decision to impose a mandate for the inclusion of information on "salaries paid to schoolteachers, school site principals, and school district superintendents." Claimant acknowledges in the test claim filing that Education Code section 41409 was amended by Statutes 2001, chapter 734, but that it "made *non-substantive* changes." [Emphasis added.] No new activities were alleged by the claimant, therefore the Commission finds that Education Code section 41409, as amended by Statutes 2001, chapter 734, does not impose a new program or higher level of service beyond that which was recognized in the prior test claim determination, and does not impose costs mandated by the state.

### **CONCLUSION**

The Commission concludes that Education Code sections 33126, 33126.1, and 41409, as added or amended by Statutes 2000, chapter 996, Statutes 2001, chapters 159 and 734, and Statutes 2002, Chapter 1168, do not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, and do not impose costs mandated by the state pursuant to Government Code section 17514. In the case of the test claim for costs under Education Code section 33126, as amended by Statutes 1997, chapter 912, the Commission does not have jurisdiction to hear a new claim for reimbursable costs mandated by the state.