Executive Summary

The Commission on State Mandates at its hearing of February 24, 1994, determined that a reimbursable state mandated program exists under provisions of Education Code section 39831.5, and Vehicle Code section 22122, subdivision (c), subpart (3), enacted by Chapter 624, Statutes of 1992. In addition, the Commission determined that other changes made by Education Code section 39831.5, of Chapter 624, Statutes of 1992, do not impose a reimbursable state mandated program upon school districts.

Member Shuman moved to adopt the staff recommendation to find that Education Code section 39831.5 and Vehicle Code section 22112, subdivision (c), subpart (3), as amended by Chapter 624, Statutes of 1992, impose a new program or higher level of service in an existing program upon school districts within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514, by requiring school districts to give pupils safety instruction for other than home to school transportation, document safety instruction given, retain the information documented as specified, by requiring schoolbus drivers to use a handheld "STOP" sign when escorting pupils across a highway or private road, and providing for the reasonable and legally necessary storage of such signs when not in use. Member Richardson seconded the motion. The vote on the motion was unanimous. The motion carried.

Staff has prepared the attached proposed statement of decision which identifies the basis for the Commission's decision.
BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:
San Jose
Unified School District,
Claimant

No, CSM-4433
Education Code
Section 39831.5
Vehicle Code
Section 22122, Subdivision (c),
Subpart (3)
Chapter 624, Statutes of 1992

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on February 24, 1994, in Sacramento, California, during a regularly scheduled hearing.

Mr. William Doyle and Ms. Carol Miller appeared on behalf of the San Jose Unified School District, Mr. Allan Burdick appeared on behalf of the California State Association of Counties, and Mr. Jim Apps appeared on behalf of the Department of Finance.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUE
Do the provisions of Education Code section 39831.5 and Vehicle Code section 22122, subdivision (c), subpart (3), of Chapter 624, Statutes of 1992, require school districts to implement a new program or provide a higher level of service in an existing
program, within the meaning of section 6, article XIII B of the
California Constitution and Government Code section 17514?

BACKGROUND AND FINDINGS OF FACT

The test claim was filed with the Commission on August 20, 1993, by
the San Jose Unified School District.

The elements for filing a test claim, as specified in section 1183
of Title 2 of the California Code of Regulations, were satisfied.

Chapter 624, Statutes of 1992 added Education Code section 39831.5,
as follows:

"(a) All pupils at the elementary and secondary level in
public or private school who are transported in a
schoolbus or school pupil activity bus shall receive
instruction in schoolbus emergency procedure and
passenger safety. The county superintendent of schools,
superintendent of the school district, or owner/operator
of a private school, as applicable, shall ensure that the
instruction is provided as follows:

"(1) At least once in each school year, all pupils in
prekindergarten, kindergarten, and grades 1 to 8,
inclusive, who receive home-to-school transportation
shall receive safety instruction which includes, but is
not limited to; proper loading and unloading procedures,
including escorting by the driver, proper passenger
conduct, bus evacuation, and location of emergency
equipment. Instruction also may include responsibilities
of passengers seated next to an emergency exit. As part
of the instruction, pupils shall evacuate the schoolbus
through emergency exit doors.

"(2) Prior to departure on a school activity trip, all
pupils riding on a schoolbus or school pupil activity bus
shall receive safety instruction which includes, but is
not limited to, location of emergency exits, and location
and use of emergency equipment. Instruction also may
include responsibilities of passengers seated next to an
emergency exit.
The following information shall be documented each time the instruction required by paragraph (1) of subdivision (a) is given:

(1) Name of school district, county office of education, or private school.
(2) Name and location of school.
(3) Date of instruction.
(4) Names of supervising adults.
(5) Number of pupils participating.
(6) Grade levels of pupils.
(7) Subjects covered in instruction.
(8) Amount of time taken for instruction.
(9) Bus driver's name.
(10) Bus number.
(11) Additional remarks.

The information recorded pursuant to this subdivision shall remain on file at the district or county office, or at the school, for one year from the date of the instruction, and shall be subject to inspection by the Department of the California Highway Patrol.

The Commission observed that, prior to enactment of Education Code section 39831.5, Title 5, California Code of Regulations, section 14102, stated:

"Section 14102. Bus Evacuation Instruction.

Each school year, the governing board shall provide, and require each pupil who is transported from home to school in a school bus to receive, appropriate instruction in safe riding practices and emergency bus evacuation drills."

After comparing the requirements of Education Code section 39831.5, subdivision (a), subpart (I), to the pre-existing requirements established by Title 5, California Code of Regulations, section 14102, the Commission found that the provisions of Education Code section 39831.5, subdivision (a), subpart (1), provide a clarification of the requirements of Title 5, California Code of Regulations, section 14102.
The Commission found that two things were required to be provided to specified pupils by Title 5, California Code of Regulations, section 14102, and that these were "appropriate instruction in safe riding practices" and "emergency bus evacuation drills? The Commission found that Education Code section 39831.5; subdivision (a), subpart (1), by describing specific topics which must be covered and permitting the inclusion of additional topics, clarified the prior requirement for "appropriate instruction in safe riding practices", but did not expand it.

The Commission found that Title 5, California Code of Regulations, section 14255, which established the initial requirement for emergency bus evacuation drills, stated that specified pupils "shall participate in emergency bus evacuation drills", and that, while Title 5, California Code of Regulations, section 14255 was superseded by Title 5, California Code of Regulations, section 14102, that the intent that pupils participate was implicit in the term "drill". The Commission therefore found that the requirement under Education Code section 39831.5 that, as part of the instruction, pupils shall evacuate the schoolbus through emergency exit doors, is a clarification of the requirement that specified pupils receive "emergency bus evacuation drills" required by Title 5, California Code of Regulations, section 14102, and does not expand the prior requirement.

The Commission therefore found that the required safety instruction under Education Code section 39831.5, subdivision (a), subpart (1), is substantially the same as the safety instruction previously
required under **Title 5**, California Code of Regulations, section 14102.

Regarding Education Code section 39831.5, subdivision (a), subpart (2), the Commission noted these statutory provisions address safety instruction to be given to pupils on school activity trips, as opposed to safety instruction required for home to school trips.

The Commission found no pre-existing requirement to provide safety instruction to pupils on school activity trips and, accordingly, the Commission found that the safety instruction under Education Code section 39831.5, subdivision (a), subpart (2), is a new requirement, but is very limited in scope.

The claimant alleged that Chapter 624, Statutes of 1992 requires school districts to train instructors to prepare schoolbus drivers to give the newly required safety instruction, to train district-employed schoolbus drivers to give the newly required safety instruction, and to obtain materials needed to train the schoolbus drivers and to use in giving the newly required safety instruction.

The Commission found no statutory requirement for the school district to train instructors to train the schoolbus drivers or to train the schoolbus drivers themselves. Further, the Commission found that a certified schoolbus driver or certified school pupil activity bus driver will have the knowledge needed to give the safety instruction required by Education Code section 39831.5,
subdivision (a), subpart (2). Such a certified driver will not require additional training to be able to point out the location of emergency exit doors or the location and use of emergency equipment.

Further, the Commission found that Education Code section 39831.5, subdivision (a), subparts (1) and (2), contains no requirement that materials be used to train schoolbus drivers or in giving safety instruction, as specified.

Regarding Education Code section 39831.5, subdivision (b), the Commission recognized that this statute requires specified information to be documented each time the annual safety instruction is given to pupils pursuant to Education Code section 39831.5, subdivision (a), subpart (1). Furthermore, the statute requires that this information to be retained for a specified period and made available for inspection by the Department of the California Highway Patrol.

The Commission did not locate any pre-existing requirements for the activities set forth in Education Code section 39831.5, subdivision (b) and, accordingly, found that such required activities are new.

Vehicle Code section 22122, subdivision (c), subpart (3), states:

"(c) When pupils need to cross a highway or private road upon which the schoolbus is stopped, at a location where traffic is not controlled by a traffic officer or
official traffic control signal, the driver shall do all of the following:

"(3) Escort all pupils in prekindergarten, kindergarten, or any of grades 1 to 8, inclusive, across the highway or private road. The driver shall use an approved hand-held 'STOP' sign while escorting pupils."

The Commission observed that, prior to enactment of Vehicle Code section 22112, Title 13, California Code of Regulations, section 1227 stated, in relevant part:

"Section 1227. School Bus Stops.

"(b) Pupils Crossing Highway. When, to board a bus or after being discharged from a bus, pupils must cross the highway upon which the school bus is stopped, the school bus driver shall operate the flashing red signal (cross-over) lamps pursuant to Vehicle Code Section 22112, and shall also:

"(2) Escort across the highway all pupils who attend a prekindergarten or elementary school. The driver may use an approved handheld stop sign while escorting any pupil."

The Commission found that under Vehicle Code section 22112, subdivision (c), subpart (3), a schoolbus driver is now required to use an approved handheld "STOP" sign while escorting certain pupils across a highway or private road. Previously, the use of such signs was discretionary.

Moreover, the Commission found that this new "STOP" sign requirement does not require that these handheld signs be placed on all schoolbuses. Rather, the number of handheld "STOP" signs
statutorily required is the quantity needed for those schoolbuses on routes which require pupils to be escorted across highways or private roads, plus a reasonable number of additional signs for use on schoolbuses which may be used sometimes, but not always, on such routes. The number of handheld "STOP" signs subject to reimbursement shall be addressed when the parameters and guidelines are considered.

The Commission acknowledged that the provisions of Vehicle Code section 22112, subdivision (c), subpart (3), do not expressly address the storage of "STOP" signs. However, the Commission found that storing handheld "STOP" signs on schoolbuses, when the signs are not in use, is implicit in the requirement to use such signs.

The Commission further found that while a number of feasible methods of storing handheld "STOP" signs may exist, only those methods that are reasonable and legally necessary are subject to reimbursement. Those storage methods that are excessive and unreasonable are not reimbursable. Further, the Commission recognized that the details and costs of sign storage are issues to be addressed when parameters and guidelines are considered.

APPLICABLE LAW RELEVANT TO THE DETERMINATION OF A REIMBURSABLE STATE MANDATED PROGRAM

Government Code section 17500 and following, and section 6, article XIIIB of the California Constitution and related case law.
The Commission determines that it has the authority to decide this claim under the provisions of Government Code sections 17500 and 17551, subdivision (a),

The Commission concludes that the provisions of Education Code section 39831.5, subdivision (a), subpart (1), of Chapter 624, Statutes of 1992, do not impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514.

The Commission concludes that the provisions of Education Code section 39831.5, subdivision (a), subpart (2), of Chapter 624, Statutes of 1992, do impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514. These provisions, although very limited in scope, require that instruction be given to pupils on school activity trips, as opposed to safety instruction required for home to school transportation.

The Commission concludes that the provisions of Education Code section 39831.5, subdivision (b), of Chapter 624, Statutes of 1992, do impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514, by
requiring school districts to document annual schoolbus safety instruction given to pupils and by requiring school districts to retain such documents, as specified.

The Commission concludes that the provisions of Vehicle Code Section 22122, subdivision (c), subpart (3), do impose a new program or a higher level of service in an existing program within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514, by requiring schoolbus drivers to use an approved handheld "STOP" sign while escorting pupils across a highway or private road and implicitly requiring the storage of such signs. As previously stated herein, the extent to which reimbursement for handheld "STOP" signs and storage is permissible, shall be set forth in the parameters and guidelines.

Accordingly, such costs incurred related to the reimbursable state mandated programs stated above, are costs mandated by the state and are subject to reimbursement within the meaning of section 6, article XIIIB of the California Constitution. Therefore, the claimant is directed to submit parameters and guidelines, pursuant to Government Code section 17557 and Title 2, California Code of Regulations, section 1183.1, to the Commission for its consideration.

The foregoing conclusions pertaining to the reimbursable state mandated programs are subject to the following conditions:
The determination of a reimbursable state mandated program does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office.