

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 60604 and 60605;
Statutes 1995, Chapter 975; Statutes 1996,
Chapter 69; Statutes 1997, Chapter 828;

California Department of Education Standards-
Based Accountability Memoranda dated
May 9, 1997, June 30, 1997, September 1997,
April 15, 1998 and July 20, 1998

Filed on December 10, 1998

By San Diego Unified School District,
Claimant.

No. 98-TC-10

Standards-Based Accountability

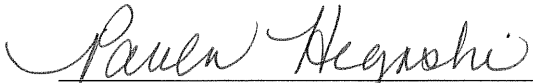
PROPOSED STATEMENT OF DECISION
PURSUANT TO GOVERNMENT CODE
SECTION 17500 ET SEQ.; TITLE 2,
CALIFORNIA CODE OF REGULATIONS,
DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on August 29, 2002)

STATEMENT OF DECISION

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

This Decision shall become effective on August 30, 2002.



PAULA HIGASHI, Executive Director

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STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on July 30, 2002 during a regularly scheduled hearing. Arthur M. Palkowitz appeared for claimant, San Diego Unified School District. Carol Berg appeared on behalf of Education Mandated Cost Network. Mohammed Wardak and Michael Wilkening appeared on behalf of the Department of Finance.

At the hearing testimony was given, the test claim was submitted, and the vote was taken.

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

The Commission approved the staff analysis for this test claim by a 6-0 vote.

BACKGROUND

On December 10, 1998, claimant, San Diego Unified School District, submitted a test claim alleging a reimbursable state mandate for school districts to engage in standards-based accountability assessments and reporting.' The claim arises from enactments or amendments to Education Code sections 60604 and 60605 by Statutes 1995, chapter 975; Statutes 1996, chapter 69; and Statutes 1997, chapter 828. This legislation required the State Board of Education and the state Superintendent of Public Instruction to design, implement, and adopt statewide academically rigorous content standards in reading, writing, and mathematics to serve as the basis for assessing the academic achievement of individual pupils and of schools, school districts, and the California education system. Claimant also asserts that several 1997 and 1998 memoranda and documents promulgated by the California Department of Education (CDE) are executive orders resulting in reimbursable state mandates. The standards-based accountability

¹ Reimbursement period for this test claim begins no earlier than July 1, 1997. (Gov. Code, § 17557, subd. (c).)

program is based upon the state's implementation of the federal Title I mandate of the Improving America's Schools Act,² which requires states and local educational agencies (LEAs) receiving funding under this law, to design and implement pupil performance standards and assessments in mathematics and language skills.

Department of Finance's (DOF's) initial April 26, 1999 response to the test claim allegations agreed in part with claimant on some of the identified new activities, however they also asserted that the federal law exception to finding a reimbursable state mandate under Government Code section 17556, subdivision (c), applied to part of the test claim. DOF's June 6, 2002, comments on the draft staff analysis state,

We concur with the Staff analysis that the relevant legislation does not create reimbursable mandates. Also we concur with the Staff analysis that the documents developed by [CDE], dated June 30, 1997, and April 15, 1998, may have resulted in State-mandated activities . . . Additionally we would like to clarify that there is a current claim for the Standardized Testing and Reporting (STAR) program (CSM 97-TC-23) and any activity that falls under the Parameters and Guidelines for that mandate should not be included as reimbursable in this claim.

No written comments were received from the claimant on the draft staff analysis. However, at the July 30, 2002 Commission hearing, claimant's representative testified that the issue in the *Standards-Based Accountability* test claim "has nothing to do with the administration of the STAR program." The claimant further stated "We agree with staff that the CDE's memorandums, dated June 30th [1997] and April 15th [1998], require the districts to fill out reports regarding that assessment, regarding the methods used, and also for each site in this -- each district to fill out reports on how the students are progressing and whether they are meeting or exceeding the grade-level standards established."

The Commission found that CDE memoranda dated June 30, 1997, and April 15, 1998, contain a new program or higher level of service for standards-based accountability reporting activities, as specified at page 17 below, within the meaning of section 6, article XIII B of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514.

COMMISSION FINDINGS

A test claim statute or executive order may impose a reimbursable state mandated program if it orders or conunands a local agency or school district to engage in an activity or task.³ 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. 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

² Title 20 United States Code section 6301 et seq., added October 20, 1994, and 34 Code of Federal Regulations part 200.1 et seq.

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

not apply generally to all residents and entities in the state.⁴ To determine if the program is new or imposes a higher level of service, the analysis must compare the test claim legislation with the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state.⁵

Issue 1: Are the test claim statutes and executive orders subject to article XIII B, section 6 of the California Constitution?⁶

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” 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.⁷ In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.⁸

The Commission finds that the test claim legislation constitutes 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, to the extent that the test claim legislation requires school districts to report on standards-based accountability assessments of their students. The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.⁹

The test claim legislation also satisfies the second test that triggers article XIII B, section 6 to the extent that the test claim legislation requires school districts to engage in specific standards-based accountability assessments and reporting activities solely applicable to public school administration, that do not apply generally to all residents and entities in the state. Accordingly, the Commission finds that school district standards-based accountability assessments and reporting constitutes a “program” and, thus, is subject to article XIII B, section 6 of the California Constitution.

⁴ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

⁵ Government Code section 175 14.

⁶ Article XIII B, section 6 of the California Constitution 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.”

⁷ *County of Los Angeles, supra*, 43 Cal.3d at 56.

⁸ *Camel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

⁹ *Long Beach Unified School Dist. v. State of California, supra*, 225 Cal.App.3d at 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.”

Issue 2: Do the subject statutes and CDE memoranda impose a new program or higher level of service within an existing program upon school districts within the meaning of article XIII B, section 6 of the California Constitution by requiring new or additional activities related to standards-based accountability assessments?

The claimant contends that the test claim legislation imposes a new program or higher level of service upon school districts by requiring specific new activities related to standards-based accountability assessments. Under prior law, school districts were required to engage in pupil testing programs and assessments designed to evaluate statewide pupil performance, however, these requirements were revised by Statutes 199 1, chapter 760. One of the assessments referenced in the current test claim is the Standardized Testing and Reporting program, or STAR. STAR is the subject of another test claim, *97-TC-23*. The current test claim is limited to the issue of reporting on standards-based accountability and assessing whether a student is at or exceeding grade-level standards, not the administration of the STAR program.

The individual issues addressed by this claim meet the test of imposing unique requirements upon school districts that do not apply generally to all residents and entities in the state, however, this does not end the analysis. The analysis for finding a new program or higher level of service must examine whether the test claim legislation requires a school district to engage in activities, and whether such activities constitute a new program or higher-level of service when compared to prior law.

Education Code sections 60604 and 60605, and claimed CDE memoranda are analyzed below for whether they impose mandatory new activities upon school districts. Finally, Issue 3 analyzes whether any Government Code section 17556 exceptions apply to limit a finding of costs mandated by the state for any new program or higher level of service.

Test Claim Statutes:

Education Code section 60604. This Education Code section, as added by Statutes 1995, chapter 975 and amended by Statutes 1996, chapter 69 and Statutes 1997, chapter 828¹⁰ provides that the state Superintendent of Public Instruction shall design and implement a statewide pupil assessment program.

The remainder of the statutory language is also directed to the state Superintendent of Public Instruction and does not impose any activities upon school districts.

Education Code section 60605. This Education Code section, as added by Statutes 1995, chapter 975 and amended by Statutes 1996, chapter 69 and Statutes 1997, chapter 828¹¹ provides, in pertinent part, that by January 1, 1998, the State Board of Education shall adopt statewide academically rigorous content standards, pursuant to the recommendations of the Commission for the Establishment of Academic Content and Performance Standards, in the core curriculum areas of reading, writing, and mathematics to serve as the basis for assessing the academic achievement of individual pupils and of schools, school districts, and the California education system. Not later than November 1, 1998, the State Board of Education shall adopt these

¹⁰ Effective October 10, 1997.

¹¹ Effective October 10, 1997.

standards in the core curriculum areas of history/social science and science. The statute further provides, that:

The State Board of Education may modify any proposed content standards or performance standards prior to adoption and may adopt content and performance standards in individual core curriculum areas as those standards are submitted to the board by the commission or the contractor. The standards adopted pursuant to this section shall be for the purpose of guiding state decisions regarding the development, adoption, and approval of assessment instruments pursuant to this chapter and *shall not be construed to mandate any actions or activities by school districts.* (Emphasis added.)

The remainder of the statutory language is also directed to the State Board of Education or the state Superintendent of Public Instruction and does not impose any activities or duties upon school districts.

Based on the statutory language of Education Code sections 60604 and 60605, as added by Statutes 1995, chapter 975 and amended by Statutes 1996, chapter 69 and Statutes 1997, chapter 828, the Commission finds no mandatory new activities were directly required of school districts, therefore, the Commission finds that these code sections do not impose a new program or higher level of service.

Although the Commission finds the claimed Education Code sections do not impose a new program or higher level of service on school districts, the State Board of Education or the state Superintendent of Public Instruction, in implementing the legislation, has created some new programs or higher levels of service through executive orders directed to the school districts, as described below. Claimant acknowledges, “[b]ecause CDE cites these statutes as the basis for its standards based accountability program, this test claim includes these statutes . . . as a source of the mandate.” The test claim executive orders are analyzed below.

Test Claim Executive Orders: California Department of Education Memoranda:

Claimant alleges that several 1997 and 1998 memoranda and documents promulgated by the CDE constitute reimbursable state mandates for the state’s implementation of the federal Title I mandate of the Improving America’s Schools Act (IASA). Specifically, claimant alleges a reimbursable state mandated program for the following activities that exceed any federal mandate directly imposed upon schools:

- Developing the instruments and processes required to assess whether students meet or exceed grade-level standards;
- Reporting the results of the assessments to the state;
- Responding to state reviews of standards-based accountability programs;
- Training school district personnel on the requirements of the standards-based accountability program;
- Assessing students other than those who are both served by Title I and in one grade of each of the spans of grades 3 through 5, 6 through 9, and 10 through 12;
- Using multiple measures of student performance.

Under Government Code section 175 16, an “executive order” may include “any order, plan, requirement, rule, or regulation issued by . . . any agency, department, board, or commission of state government.” While some of the CDE memoranda meet the definition of an executive order, to make a finding of a reimbursable state mandated program the executive order must impose a new program or a higher level of service upon school districts as compared to prior law, and impose costs mandated by the state. The five claimed CDE memoranda are discussed individually below.

May 9, 1997 Letter from State Superintendent of Public Instruction and Enclosure: DRAFT School Site Checklist on Standards and Assessment for IASA Accountability System.

The letter discusses the need for statewide conversion to a standards-based accountability system, including recommendations for school districts to use in setting performance goals. A sample form entitled ““School Site Checklist” and marked “DRAFT” was enclosed with the letter. The letter indicates “final forms will be sent to districts in September when the Consolidated Application, Part II, is printed for districts.” The letter makes reference to the Consolidated Application, Part II, to be completed by school districts as part of their scheduled Coordinated Compliance Review,¹² but does not require any actions. Although the documents are informational regarding the new accountability system, the Commission finds that the letter and draft checklist do not meet the definition of an executive order, as they do not issue any directives or require any activities on the part of school districts. The Commission finds that the CDE memorandum, dated May 9, 1997, does not impose a reimbursable state mandated program.

June 30, 1997 Letter from Chief Deputy Superintendent for Educational Policy, Curriculum and Department Management and Enclosure: Instructions for Completing the 1996-97 “Student Achievement School Report.”

The June 30, 1997 letter provided instructions to school districts and set the November 1, 1997, deadline for reporting 1996- 1997 student achievement results to the state. The letter specifies that only school districts scheduled for a 1997- 1998 Coordinated Compliance Review (CCR), or schools applying for the California Distinguished School, National Blue Ribbon School or IASA Title I Achieving School competitions, were required to complete and submit the *Student Achievement School Report* forms. The letter also states that “a small number of districts not participating in the CCR process in 1997-98 will be asked to submit student performance data used in the identification of Program Improvement Schools as part of a special study.”

The school district tasks were set up in two forms attached to the letter, Appendix B- 1: *District Assessment and Accountability System Description*, and Appendix B-2: *1996-97 Student Achievement Summary School Report*. Page three of the letter enumerates the reporting requirements for school districts, as follows:

¹² A Coordinated Compliance Review, as administered by the California Department of Education, School and District Accountability Division, evaluates multiple educational programs at the local level. Generally, school districts complete a Coordinated Compliance Review on a four-year cycle, e.g. School District A is scheduled for 1996-1997, and again in 2000-2001; School District B is scheduled for 1997-1998, and again i n 2001- 2002.

Districts are required to complete two main tasks:

1. Describe the instruments and processes used to determine the level of achievement for each student,¹³ and
2. Report the percentage of all students in each school that meet or exceed the district-established grade-level standards.¹⁴

Claimant also asserts that school districts must utilize “multiple measures” as part of the process for determining each student’s performance. The June 30, 1997 letter provides a description of “multiple measures” in this context, as follows:

For the school year 1996-97, judgments of individual achievement must be based on at least two of the following measures: publisher’s norm- or criterion-referenced tests, performance-based assessments such as writing assessments, district-developed assessments, class grades or other teacher assessments, running records, the California Learning Record, portfolios with rubrics, skill inventories, and other valid and reliable measures.

Completing these forms and assessing individual student achievement levels in reading/language arts and mathematics by combining multiple measures was not required by prior law, therefore the Commission finds that the June 30, 1997 letter and enclosure, *Instructions for Completing the 1996-97 “Student Achievement School Report”* contains a new program or higher level of service for the following activities:

- Complete and submit to the state by November 1, 1997, the *District Assessment and Accountability System Description*, to explain the measures and methods used by the school district in assessing individual student achievement levels in reading/language arts and mathematics for the 1996-97 year.
- Complete and submit to the state by November 1, 1997, one form for each school in the district, the *1996-97 Student Achievement Summary School Report*, to report the percentage of all students in each school that meet or exceed the district-established grade-level standards in reading/language arts and mathematics, and separately for students served under each of the following specially-funded programs: Title I - Targeted Assistance, Migrant Education, Limited English Proficient, Special Education, and/or Gifted and Talented.

Any claims for reimbursement for completing the *1996-1997 Student Achievement School Report* must include evidence that the school district was subject to the 1997- 1998 CCR, or evidence that the CDE specifically required the student performance data from that school district as part of the CDE’s special study. Those schools completing the reports to apply for any of the competitions did so at their option, and thus were not subject to a state mandate.

¹³ Required in form Appendix B- 1.

¹⁴ Required in form Appendix B-2.

September 1997 Guidelines for Identifying Title I Program Improvement Schools.

This web-based twelve-page memorandum states that it provides guidelines “intended to help districts meet the Improving America’s Schools Act (IASA) Title I requirement to identify Program Improvement schools during the period of transitional assessment.” The printout submitted in the test claim materials features a text-box dated November 3, 1998, which states that “recent changes in state policy and administrative procedure have made some of the contents on this web page out of date.” The document is no longer available on the CDE’s website, however, the Commission accepts this document as authentic, as a memoranda in effect during the reimbursement period for this test claim.

The test claim includes title 20 United States Code sections 6301-63 12, as claimant’s Exhibit K. Section 63 17 must also be analyzed for imposition of a federal mandate directly upon LEAs and individual schools who are recipients of Title I federal funding.¹⁵ The printout, *Guidelines for Identifying Title I Program Improvement Schools*, describes federal requirements for schools and school districts receiving Title I federal funds, particularly the requirements delineated by title 20 United States Code section 63 17, as enacted in 1994 and amended in 1996.¹⁶ Section 63 17 provides, in part, that

(c) School improvement

(1) In general

A local educational agency shall identify for school improvement any school served under this part that --

- (A) has been in program improvement . . . , for at least two consecutive school years prior to such day;
- (B) has not made adequate progress as defined in the State’s plan under section 63 1 1(b)(2)(A)(i) of this title for two consecutive school years, . . .
- (C) has failed to meet the criteria established by the State through the State’s transitional procedure under section 63 1 1(b)(7)(B) of this title for two consecutive years.

The *Guidelines for Identifying Title I Program Improvement Schools* explains federal statutes and regulations for schools and school districts receiving federal Title I funding. The document describes a new *federal* program that requires the use of “State assessments described in the State plan,” and requires state oversight and review. Any of the guidelines that may go beyond federal requirements are presented as “recommendations,” not mandates, and thus the guidelines do not impose a new program or higher level of service mandated by the state.

¹⁵ Title 20 United States Code section 63 17.

¹⁶ Pub.L. No. 89-10, Title I, § 1116, as added Pub.L. No. 103-382, Title I, § 10 1, Oct. 20, 1994, 108 Stat. 3542, and amended Pub.L. No. 104-134, Title I, § 101(d), Apr. 26, 1996, 110 Stat. 1321-255; renumbered Pub.L. No. 104-140, Title I, § 1(a), May 2, 1996, 110 Stat. 1327.

April 15, 1998 Letter from Chief Deputy Superintendent for Educational Policy, Curriculum and Department Management and Enclosures: *Consolidated Application and Multiple Measures: Models for Combining Measures to Determine Whether Students Meet Grade-Level Standards.*

The April 15, 1998 memorandum describes its contents, as follows:

This memorandum summarizes refinements to reporting requirements for standards-based accountability for 1997-98. These requirements pertain to student performance data collected during the 1997-98 school year and reported on the Consolidated Application, Part II, due November 1, 1998 to the CDE. Please note that there are significant changes in the requirements in terms of which schools must report data as well as the criteria for local assessment and accountability systems.

CDE has defined features of a basic accountability model. Results from the new Standardized Testing and Reporting (STAR) Program test will be a required component of local accountability systems under this model. The model also sets criteria for local assessments and for grade level performance on the STAR test (Stanford/9, Form T) and for combining multiple measures.

The memorandum, at page three, describes the minimum features of a basic accountability model:

- All districts are required to use at least one achievement measure for reading/language arts and mathematics for students in grades K- 12.
- Following the federal IASA guidelines, districts are required to use a total of two or more assessment measures (multiple measures) per subject area in one grade for each of the following grade spans: 3-5, 6-9, and 10-12.
- Districts are required to use the STAR test as one component of their accountability system in grades 2-11, for all students who have STAR test data available.¹⁷

A document attached to the memorandum, *Multiple Measures: Models for Combining Measures to Determine Whether Students Meet Grade-Level Standards*, “presents a set of model approaches designed to help California school district personnel use information from multiple measures to determine whether students are meeting district-adopted, grade-level standards.”

Class grades may be used as a component of a local accountability system. “Districts are required to describe steps and procedures that lead to rigor and comparability across classrooms and schools for all locally developed measures.” For example, “[i]f class grades are to be used as one component of an accountability system, the district should submit a description of the grading policy and an assurance that the course of study on which grades are based is at least as rigorous as the content standards adopted by the State Board of Education.”

Accountability results must be reported for all Title I schools, all schools in Coordinated Compliance Review districts, and all schools entering Distinguished Schools, National Blue Ribbon Schools, or Achieving Schools competitions. The only school districts potentially

¹⁷ Standardized Testing and Reporting (STAR), 97-TC-23, Parameters and Guidelines provides reimbursement for activities related to reporting STAR program results. To the extent that any of these costs are reimbursed under the STAR Parameters and Guidelines, they may not be reimbursed under this test claim.

eligible for reimbursement for reporting accountability results for the 1997- 1998 school year are those required to report under the CCR. All other schools and districts are reporting at their option as part of a competition, or in compliance with federal law as recipients of Title I funding.

The memorandum includes three forms in the appendix. Appendix A-1 is the *District Assessment and Accountability System Description* form, to be used as a guideline in the preparation of the district's description of the current assessment and accountability system used to collect the data reported on the school-level forms. Appendix A-2, the *1997-98 Student Achievement School Report*, is used by each school in the district to report the percentage of all students in each school that meet or exceed the district-established grade-level standards in reading/language arts and mathematics. The results must then be separated (disaggregated) by specially-funded students in the following categories: Title I -Targeted Assistance, Migrant Education, Limited English Proficient, Special Education, and Gifted and Talented. The final form, Appendix A-?, *Identification of Schools for Program Improvement, 1998-99*, is only required for districts receiving federal IASA funding and fulfills the reporting requirements of title 20 United States Code section 63 17.

Completing *District Assessment and Accountability System Description* and the *1997-98 Student Achievement School Report* forms and assessing individual student achievement levels in reading/language arts and mathematics by combining multiple measures was not required by prior law, therefore the Commission finds that the June 30, 1997 letter and enclosure, *Instructions for Completing the 1997-98 "Student Achievement School Report"* contains a new program or higher level of service for the following activities:

- Complete and submit to the state by November 1, 1998, *District Assessment and Accountability System Description*, to explain the measures and methods used by the school district in assessing individual student achievement levels in reading/language arts and mathematics for the 1997-98 year. One of the measures used shall be the STAR program.
- Complete and submit to the state by November 1, 1998, one form for each school in the district, *1997-98 Student Achievement Summary School Report*, to report the percentage of all students in each school that meet or exceed the district-established grade-level standards in reading/language arts and mathematics, and separately for students served under each of the following specially-funded programs: Title I - Targeted Assistance, Migrant Education, Limited English Proficient, Special Education, and/or Gifted and Talented.

As described regarding the 1997-1998 reports, any claims for reimbursement for completing the *1997-1998 Student Achievement School Report* must include evidence that the school district was subject to the 1998-1999 CCR, or evidence that the CDE specifically required the student performance data from that school district as part of the CDE's special study.

July 20, 1998 Letter from Chief Deputy Superintendent for Educational Policy, Curriculum and Department Management and Three Enclosures: *Instructions for Completing the "Student Achievement School Report," Spring 1998 Edition; Summary of Guidelines for Identifying Title I Schools for Program Improvements: Refinements for 1997-98; Frequently Asked Questions about Standards-Based Accountability, Spring 1998.*

This memorandum and attachments provides additional guidance to districts on standards-based accountability reporting due November 1, 1998. The documents include repetition of much of the information provided in the April 15, 1998 documents. The Commission finds that the letter, and the attachments, *Instructions for Completing the "Student Achievement School Report," Spring 1998 Edition*, and *Frequently Asked Questions about Standards-Based Accountability, Spring 1998*, do not meet the definition of an executive order, as they are informational only, and do not issue any new directives or require any activities on the part of school districts when compared to the documents issued on April 15, 1998.

The attachment, *Summary of Guidelines for Identifying Title I Schools for Program Improvements: Refinements for 1997-98*, describes the same program discussed above regarding the web-based memorandum, *September 1997 Guidelines for Identifying Title I Program Improvement Schools*. The *Summary of Guidelines for Identifying Title I Schools for Program Improvements: Refinements for 1997-98* explains federal statutes and regulations for schools and school districts receiving federal Title I funding. The document describes a new *federal* program that requires the use of "State assessments described in the State plan," and requires state oversight and review. Any of the guidelines that may go beyond federal requirements are presented as "recommendations," not mandates, and thus the guidelines do not impose a new program or higher level of service mandated by the state.

Issue 3: Do the CDE memoranda found to contain a new program or higher level of service also impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines, "costs mandated by the state" as any *increased cost* a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. DOF, in its April 26, 1999 response to the test claim filing, asserts that Government Code section 17556, subdivisions (c) and (e), are applicable to limit finding a reimbursable state mandate for much of the test claim legislation.

Government Code section 17556, subdivision (c):

Government Code section 17556, subdivision (c), provides that there are no costs mandated by the state if the statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation. DOF, in its April 26, 1999 response to the test claim filing, contends that Government Code section 17556, subdivision (c), applies here since title 20 United States Code sections 6301-6317, and 34 Code of Federal Regulations parts 200.1-200.6 require:

- The state must develop or adopt performance standards and assessments to determine if Title I students are meeting state performance standards.

- The state must adopt assessments that measure the performance of Title I students in one grade in each of the grade spans 3-5, 6-9, and 10-12. These assessments must involve multiple approaches within an assessment system.
- School districts must use the state assessment and any additional measures or indicators described in the LEA's plan to review annually the progress of each school toward enabling its students to meet state standards.
- School districts must disaggregate the results of the review based on gender, racial and ethnic group, English proficiency, migrant status, disability, and economic status and report the results as specified.
- School districts must publicize and disseminate the results of the annual review.
- The State Education Agency must review annually the progress of each local education agency served under Title I to determine whether the school is making adequate progress toward enabling their students to achieve the state's performance standards.

Further, DOF states that although the test claim legislation "may result in additional costs to local entities, not all of the costs are reimbursable because these documents implement federal law or regulation, primarily by establishing a reasonable mechanism by which the [CDE] could fulfill its responsibilities under federal law and regulation of maintaining broad oversight of LEA progress toward ensuring students meet state standards."

The Commission disagrees with DOF's April 26, 1999 conclusion regarding an exception for reimbursement for federal mandates directed to the state, as opposed to those directed to the LEAs. Government Code section 17556, subdivision (c), states that the Commission shall not find costs mandated by the state if the test claim legislation "implemented a federal law or regulation and resulted in costs mandated by the federal government." Government Code section 175 13 defines "costs mandated by the federal government" as "any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation," including costs resulting from a state law or regulation where failure to enact such law would result in a substantial loss of funding.

The *court* in *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1593-1594,¹⁸ contrasts costs mandated on local agencies by the federal government, even when imposed via state-enacted implementing legislation, compared with the state's imposition of a federal mandate on locals in lieu of completing the activities or incurring the costs at the state level.

When the federal government imposes costs on local agencies those costs are not mandated by the state and thus would not require a state subvention. Instead, such costs are exempt from local agencies' taxing and spending limitations. This should be true even though the state has adopted an implementing statute or regulation pursuant to the federal mandate so long as the state had no "true choice" in the manner of implementation of the federal mandate.

This reasoning would not hold true where the manner of implementation of the federal program was left to the true discretion of the state. A central purpose of

¹⁸ Citing to the California Supreme Court decision in *City of Sacramento v. State of California* (1990) 50 Cal.3d 5 1, at 68, 76.

the principle of state subvention is to prevent the state from shifting the cost of government from itself to local agencies. Nothing in the statutory or constitutional subvention provisions would suggest that the state is free to shift state costs to local agencies without subvention merely because those costs were imposed upon the state by the federal government. In our view the determination whether certain costs were imposed upon a local agency by a federal mandate must focus upon the local agency which is ultimately forced to bear the costs and how those costs came to be imposed upon that agency. If the state freely chose to impose the costs upon the local agency as a means of implementing a federal program then the costs are the result of a reimbursable state mandate regardless whether the costs were imposed upon the state by the federal government.

... While the act includes certain substantive and procedural requirements which must be included in a state's plan for implementation of the act, it leaves primary responsibility for implementation to the state. In short, even though the state had no real choice in deciding whether to comply with the federal act, the act did not necessarily require the state to impose all of the costs of implementation upon local school districts. To the extent the state implemented the act by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention. (Citations omitted.)

The above analysis by the court on the difference between a federal mandate on locals, contrasted with a federal mandate on the state passed through to locals at state discretion, establishes a rational way to read the statutory exception to reimbursement of Government Code section 17556, subdivision (c). Activities required of school districts as part of a federal mandate, such as activities required of schools receiving federal Title I funding, are not reimbursable as a state mandate, even when the state enacts intervening implementing legislation. But the state cannot choose to impose costs upon school districts as a means of complying with a federal mandate when the state is responsible for the program. Complying with federal law regarding standards based accountability plans was necessary for the state to avoid a significant loss of federal incentive funds, but the state was not then compelled to impose the activities directly upon school districts. Accordingly, the Commission finds that Government Code section 17556, subdivision (c), does not deny a finding of costs mandated by the state for the activities the federal government has imposed on the state, but that the state, in turn, has imposed on the school districts.

However, the federal government does directly mandate some of the claimed activities directly upon LEAs receiving Title I funding. Title 20 United States Code section 63 17 must be analyzed for imposition of a federal mandate directly upon LEAs and individual schools who are recipients of Title I federal funding. Section 63 17 provides, in part:

(b) Local review

Each local educational agency receiving funds under this part shall –

- (1) use the State assessments described in the State plan;
- (2) use any additional measures or indicators described in the local educational agency's plan to review annually the progress of each

school served under this part to determine whether the school is meeting, or making adequate progress as defined in section 63 1 l(b)(2)(A)(i) of this title toward enabling its students to meet the State's student performance standards described in the State plan;

In addition, 34 Code of Federal Regulations part 200.5 (a)(1)(ii) requires "[e]ach LEA receiving funds under this subpart shall review annually the progress of each school served under this subpart to determine whether the school is meeting or making adequate progress toward enabling its students to meet the State's student performance standards described in the State plan."¹⁹ In addition, LEAs are required to "[d]isaggregate the results of the review according to the categories specified in § 200.4(b)(10)." Those categories are gender, racial and ethnic group, English proficiency status (Limited English Proficient), migrant status (Migrant Education), students with disabilities (Special Education), and economically disadvantaged students (Title I - Targeted Assistance). Gifted and Talented Education is the only category the state requires to be disaggregated without a parallel federal requirement. Therefore, for the following activities, the Commission finds an exception to reimbursement exists under Government Code section 17556, subdivision (c). For Title I schools, reimbursement is allowed for disaggregating the results for Gifted and Talented Education students, and for reporting on assessments for more than one grade in each of the grade spans 3-5, 6-9, and 10-12, but not for any of the other activities described below:

*For those districts scheduled for a 1997-1998 Coordinated Compliance Review, or otherwise specifically required by the state to engage in these reporting activities.**

- Complete and submit to the state by November 1, 1997, the *District Assessment and Accountability System Description*, to explain the measures and methods used by the school district in assessing individual student achievement levels in reading/language arts and mathematics for the 1996-97 year.
- Complete and submit to the state by November 1, 1997, one form for each school in the district, the *1996-97 Student Achievement Summary School Report*, to report the percentage of all students in each school that meet or exceed the district-established grade-level standards in reading/language arts and mathematics, and separately for students served under each of the following specially-funded programs: Title I - Targeted Assistance, Migrant Education, Limited English Proficient, Special Education, and/or Gifted and Talented.

For those districts scheduled for a 1998-1999 Coordinated Compliance Review:

- Complete and submit to the state by November 1, 1998, *District Assessment and Accountability System Description*, to explain the measures and methods used by the school district in assessing individual student achievement levels in reading/language arts and mathematics for the 1997-98 year. One of the measures used shall be the STAR program.
- Complete and submit to the state by November 1, 1998, one form for each school in the district, *1997-98 Student Achievement Summary School Report*, to report the percentage of all students in each school that meet or exceed the district-established grade-level

¹⁹ 34 Code of Federal Regulations parts 200.1 – 200.6.

standards in reading/language arts and mathematics, and separately for students served under each of the following specially-funded programs: Title I - Targeted Assistance, Migrant Education, Limited English Proficient, Special Education, and/or Gifted and Talented.

Government Code section 17556, subdivision (e):

DOF, in its April 26, 1999 response to the test claim allegations, makes a final argument against subvention for the standards-based accountability test claim, based upon Government Code section 17556, subdivision (e): that there are no costs mandated by the state if the statute or executive order provides offsetting savings to local agencies or school districts which 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.

DOF contends that to the extent that benefits to local education agencies resulted from the CDE memorandum and Title I guidelines, in the form of a “streamlined system of state visits, reviews and awards,” Government Code section 17556, subdivision (e) applies. DOF maintains, “to the extent that such benefits resulted in offsetting savings, there would be no state-mandated costs.”

The Commission disagrees with DOF’s April 26, 1999 contentions. First, there is no evidence in the record to support the conclusion that the test claim legislation and regulations provide offsetting savings to school districts that result in “no net costs” to the districts. The evidence in this regard is the claimant’s declaration stating that they have incurred increased costs as a result of the test claim legislation. The declaration, signed under the penalty of perjury by Dr. Sally Bennett, the Program Manager for the Program Accountability Unit for the San Diego Unified School District, states that the district has incurred approximately \$7,500 in costs for development of multiple measures and methods of combining results, and for collecting and reporting data for the period of July 1, 1997 through June 30, 1998, in order to implement the test claim legislation.

Moreover, the test claim legislation does not include additional revenue that was specifically intended to fund the entire cost of the state mandate. Accordingly, the Commission finds that Government Code section 17556, subdivision (e), does not apply to deny a finding of costs mandated by the state for the activities the Commission has identified as imposing a reimbursable state mandated program.

In addition, none of the other exceptions to finding a reimbursable state mandate under Government Code section 17556 apply here. Accordingly, the Commission finds that the activities identified in the conclusion, below, qualify for reimbursement because they impose costs mandated by the state within the meaning of Government Code section 175 14.

CONCLUSION

The Commission concludes that CDE memoranda dated June 30, 1997, and April 15, 1998, contain a new program or higher level of service for standards-based accountability activities, as specified below, for school districts within the meaning of article XIII B, section 6 of the California Constitution and impose costs mandated by the state pursuant to Government Code section 175 14. Accordingly, the Commission approves this test claim for the following specific new activities, with Government Code section 175 56, subdivision (c) exceptions for certain activities performed by schools receiving federal Title I funding, as described below:

For those districts scheduled for a 1997-1998 Coordinated Compliance Review, or otherwise specifically required by the state to engage in these reporting activities:

- Complete and submit to the state by November 1, 1997, the *District Assessment and Accountability System Description*, to explain the measures and methods used by the school district in assessing individual student achievement levels in reading/language arts and mathematics for the 1996-97 year.
- Complete and submit to the state by November 1, 1997, one form for each school in the district, the *1996-97 Student Achievement Summary School Report*, to report the percentage of all students in each school that meet or exceed the district-established grade-level standards in reading/language arts and mathematics, and separately for students served under each of the following specially-funded programs: Title I - Targeted Assistance, Migrant Education, Limited English Proficient, Special Education, and/or Gifted and Talented.

For those districts scheduled for a 1998-1999 Coordinated Compliance Review:

- Complete and submit to the state by November 1, 1998, *District Assessment and Accountability System Description*, to explain the measures and methods used by the school district in assessing individual student achievement levels in reading/language arts and mathematics for the 1997-98 year. One of the measures used shall be the STAR program.”
- Complete and submit to the state by November 1, 1998, one form for each school in the district, *1997-98 Student Achievement Summary School Report*, to report the percentage of all students in each school that meet or exceed the district-established grade-level standards in reading/language arts and mathematics, and separately for students served under each of the following specially-funded programs: Title I - Targeted Assistance, Migrant Education, Limited English Proficient, Special Education, and/or Gifted and Talented.

Exception to reimbursement for some activities by Title I funded schools within districts otherwise eligible for reimbursement above:

- For Title I funded schools completing the *Student Achievement Summary School Report* for Coordinated Compliance Review years 1997- 1998 and/or 1998- 1999, an exception to reimbursement exists under Government Code section 17556, subdivision (c). For Title I schools, reimbursement is allowed for disaggregating the results for Gifted and Talented Education students, and for reporting on assessments for more than one grade in each of the grade spans 3-5, 6-9, and 10-12, but not for any other activities.

Finally, Education Code sections 60604 and 60605, and claimed CDE memoranda dated May 9, 1997, September 1997 and July 20, 1998, do not impose any additional mandatory activities upon school districts, therefore the Commission denies finding a reimbursable state mandate for this portion of the test claim legislation.

²⁰ Standardized Testing and Reporting (STAR), 97-TC-23, Parameters and Guidelines provides reimbursement for activities related to reporting STAR program results. To the extent that any of these costs are reimbursed under the STAR Parameters and Guidelines, they may not be reimbursed under this test claim.

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.

August 30, 2002, I served the:

Adopted Statement of Decision

Standards-Based Accountability, 98-TC- 10
Education Code Sections 60604 and 60605, as added or amended by
Statutes 1995, Chapter 975, Statutes 1996, Chapter 69 and Statutes 1997, Chapter 828
and five CDE Memoranda dated May 9, 1997 through July 20, 1998
San Diego Unified School District, Claimant

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

Mr. Art Pallsowitz
Legislative Mandates Specialist
San Diego Unified School District
4100 Normal Street, Room 3159
San Diego, CA 92103

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 August 30, 2002, at Sacramento, California.


COURTNEY DIXON