BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 2550.3, 2550.4, 42238.7, and 482 16; Statutes 1997, Chapter 855; Statutes 1998, Chapter 846,

Filed on June 29, 1999,

by Campbell Union High School District, Claimant, and

Amended on September 27,200 1, adding

Education Code Section 41344; Statutes 1999, Chapters 50 and 78; Statutes 2000, Chapters 52 and 1058; Statutes 2001, Chapter 106, and Grant Joint Union High School District, Co-claimant, and

Amended on July 23, 2002, adding

San Luis Obispo County Office of Education, Co-claimant.

No. 98-TC-26, 01 -TC-04

Attendance Accounting and Audit Procedures

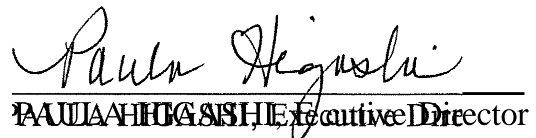
STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7

(Adopted on October 24, 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 October 25, 2002.



PAULA HIGASHI, Executive Director

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STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during regularly scheduled hearings on June 27, 2002 and September 26, 2002. At both hearings, David Scribner, of Spector, Middleton, Young and Minney, appeared for co-claimants Campbell Union High School District, Grant Joint Union High School District, and San Luis Obispo County Office of Education. Dan Troy and Susan Geanacou appeared on behalf of the Department of Finance at both hearings.

At each of the hearings testimony was given, the test claim was submitted as to the designated claimants, and the vote was taken. At the June hearing, the vote was limited to the test claim allegations filed on behalf of school districts. The September hearing was limited to the test claim allegations filed on behalf of county offices of education.

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.

At each hearing, the Commission approved the staff analysis for the portion of the test claim presented by a 6-0 vote.

BACKGROUND

On June 29, 1999, claimant, Campbell Union High School District, submitted a test claim alleging a reimbursable state mandate for school districts and county offices of education to meet new requirements for student attendance reporting.[1] The original claims arose from enactments or amendments to Education Code sections 2550.3, 2550.4, 42238.7 and 48216 by Statutes 1997, chapter 855, and Statutes 1998, chapter 846. Education Code section 48216, as amended and renumbered[2] by Statutes 1997, chapter 855, was previously decided in the test claim *Immunization Records-Hepatitis B,* 98-TC-05.

The State of California apportions funds to school districts based upon the average daily attendance of each school district. Total average daily attendance is defined as the total days of student attendance divided by the total days of instruction. Prior law allowed school districts to include excused absences in their average daily attendance calculations.. The test claim legislation changes the funding basis for school districts and county offices of education to actual attendance only. According to the bill analysis for SB 727 (Stats. 1997, ch. 855) "the bill provides for adjustments to school finance formulas so that districts and counties will be held harmless from loss due to the elimination of excused absences from the attendance count."[3] In so doing, the Superintendent of Public Instruction is required to use a formula to create a revised base revenue limit for each unit of average daily attendance. To establish this figure, the test claim legislation requires school districts and county offices of education to report actual attendance and excused absences separately for two sample years.

Following the release of the draft staff analysis for this portion of the test claim, claimant filed an amendment to the original test claim, adding a co-claimant, Grant Joint Union High School District. The new claims arise from the enactment of Education Code section 41344 by Statutes 1999, chapter 78, and the adoption of Statutes 1999, chapter 50, Statutes 2000, chapters 52 and 1058, and Statutes 200 1, chapter 106. Claimants allege that this test claim legislation requires county offices of education and school districts to "[r]espond, meet, and provide information to the State Controller related to audits of a district's new attendance figures," and "[p]articipate in the audit appeals process at the administrative and judicial levels as necessary."

The May 3, 2002 draft staff analysis addressed all of the statutes pled in the test claim. These statutes concerned claimed activities for both school districts and county offices of education. DOF filed comments on all the statutes pled in the claim. Based on the record, however, the test claim was procedurally defective as to county offices of education. As of the date of preparation of the final staff analysis for the June 27, 2002 hearing, no county office of education had appeared in this action as a claimant, nor filed a declaration alleging mandated costs exceeding $200 for the activities pled on behalf of county offices of education.[4]

On June 26, 2002, the Commission received two late filings: a declaration from San Luis Obispo County Office of Education that it has estimated costs in excess of $200 for this test claim filing,

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

[2] Prior to the amendment, the section was numbered Education Code section 46010.5.

[3] Dated August 28, 1997,

[4] As required by Government Code section 17564 and California Code of Regulations, title 2, section 1183, subdivision (h).

and an authorization of representation. At the June 27, 2002 hearing, the Commission opted to go forward with the hearing as to the allegations on behalf of school districts, and to hear the county office of education test claim allegations at a separate hearing. On September 26, 2002, the Commission heard the county office of education test claim allegations. The findings made at both hearings are included in this Statement of Decision.

Claimants ' Position

Claimants allege reimbursable costs mandated by the state for enactments or amendments to Education Code sections 2550.3, 2550.4, 41344, 42238.7 and 48216 by Statutes 1997, chapter 855, Statutes 1998, chapter 846, and Statutes 1999, chapter 78, and the adoption of Statutes 1999, chapter 50, Statutes 2000, chapters 52 and 1058, and Statutes 2001, chapter 106. Specifically, claimants allege that the test claim legislation first altered the manner in which county offices of education and school districts calculate and report average daily attendance, then required county offices of education and school districts to "[r]espond, meet, and provide information to the State Controller related to audits of a district's new attendance figures," and "[p]articipate in the audit appeals process at the administrative and judicial levels as necessary."

Claimants did not file written comments on the draft staff analysis issued July 29, 2002.

State Agency's Position

Department of Finance's (DOF's) response to the original test claim allegations agrees with claimants that Education Code sections 2550.3, 42238.7, and 48216 result in reimbursable state mandates for specific new activities. However, DOF disagrees regarding any new activities for Education Code section 2550.4, on the grounds that the statute creates a duty for the state Superintendent of Public Instruction to engage in activities, and allows county offices of education to pursue an apportionment adjustment at their discretion.

DOF's December 13, 2001, response to the amended test claim allegations disputes claimants' contention that response to the State Controller's Office (SCO's) audits of a district's new attendance figures and participation in an audit appeals process results in a reimbursable state mandated program. DOF asserts that prior law granted the SCO "broad authority to perform audits," and that the plain language of Education Code section 4 1344, subdivision (d), makes the appeals process discretionary on the part of the local educational agency.

DOF did not file written comments on the draft staff analysis issued July 29, 2002.

COMMISSION FINDINGS

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.[5] 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 not apply generally to all residents and entities in the state.' To determine if the program is new or

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

[6] *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.

imposes a higher level of service, the analysis must compare the test claim legislation with the legal requirements in effect irnmediately 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.[7]

Education Code Section 482 16.

Under Government Code section 1752 1, "test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. [8] The issue of whether Education Code section 48216, as amended by Statutes 1997, chapter 855, resulted in a reimbursable state mandate was already heard and approved by the Commission in an earlier test claim filed by Los Angeles County Office of Education. Education Code section 482 16 has not been amended since the Los Angeles County Office of Education's test claim was filed; therefore, the Comrnission fmds this code section cannot be re-addressed as part of this test claim. Eligible claimants may seek reimbursement for activities associated with Education Code section 482 16 after the Comrnission adopts pararneters and guidelines and the SCO issues claiming instructions for *Immunization Records – Hepatitis B*, 98-TC-05. The Commission finds that Education Code section 482 16 is excluded from this test claim.

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

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." The court has held that only one of these findings is necessary to trigger the'applicability of article XIII B, section 6.[11]

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 the test claim legislation mandates school districts and county offices of education to engage in student attendance reporting and respond to audits in order to receive funding

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[7] Government Code section 175 14.

[8] As defined on the filing date of this test claim, June 29, 1999.

[9] 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 defming 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."

[10] County of *Los Angeles, supra*, 43 Cal.3d at 56.

[11] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

necessary to maintain public schools. The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.[12]

The test claim legislation also satisfies the second test that triggers article XIII B, section 6, to the extent that the test claim legislation mandates school districts and county offices of education to engage in specific student attendance reporting and audit response activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts and county offices of education that do not apply generally to all residents and entities'of the state. Accordingly, the Cornmission finds those average daily attendance accounting and reporting activities constitute a "program" and, thus, are subject to article XIII B, section 6 of the California Constitution.

Issue 2: Do the subject statutes impose a new program or higher level of service within an existing program upon school districts and county offices of education within the meaning of article XIII B, section 6 of the California Constitution by requiring new or additional activities related to average daily attendance reporting?

Claimants contend that the test claim legislation imposes a new program or higher level of service upon school districts and county offices of education by requiring new activities related to calculating and reporting average daily attendance, including responding to the SCO's audits of a district's new attendance figures, and participating in the audit appeals process as necessary.

Under prior law, school districts were required to engage in recording, calculating and reporting average daily attendance. [13] The test claim legislation makes changes to some of the requirements as compared to prior law. Education Code sections 2550.3, 2550.4, 41344 and 42238.7, including related test claim legislation, are analyzed below for the imposition of a new program or higher level of service upon school districts and county offices of education.

Education Code Section 2550.3 (County Offices of Education).

Education Code section 2550.3, as added or amended by Statutes 1997, chapter 855[14] and Statutes 1998, chapter 846,[15] provides that each county superintendent of schools, as a condition of apportiomnent, shall prepare reports for the Superintendent of Public Instruction, for the schools and classes maintained by the district or county office of education. Not later than May 1, 1998, each county office of education shall report on what portions of attendance reported for the 1996-1997 school year consisted of excused absences. By September 1, 1998, each county office of education shall make a report regarding the excused absences for the 1997-1998 school year. Each report shali be prepared in accordance with instructions and on forms prescribed by the Superintendent of Public Instruction.

DOF, in its comments of September 10, 1999, agrees with claimants that Education Code section 2550.3 requires county offices of education to recalculate and re-report attendance information

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[12] ***Long Beach** Unified **School Dist.**,* *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."

[13] Education Code section 4 160 1.

[14] Operative January 1, 1998.

[15] Operative September 25, 1998.

for the 1996-1997 and 1997-1998 school years, resulting in a one-time, new reporting activity. The Commission notes that according to the statutory language there are two required reports, both due prior to the effective date of the legislation. However, as described below, correspondence from the California Department of Education (CDE) indicates that the state only required a single report on the 1996-l 997 school year, due following the effective date of the legislation. [16]

On November 18, 1998, the Education Finance Division of the CDE sent a letter to all county superintendents of schools, enclosing "Worksheet EX (New 09/98)," a three-page document fully titled "'Worksheet for Determining the Adjusted 1998-99 Base Revenue Limit In Accordance with SB 727."[17] This worksheet cites to the test claim legislation, Senate Bill 727, (Stats. 1997, ch. 855) and Senate Bill 1468, (Stats. 1998, ch. 846). County superintendents were directed to provide copies of the worksheet to each district in their county. The Commission finds that requiring county offices of education to complete and return this worksheet was the method of implementation for Education Code section 2550.3, as last amended by Statutes 1998, chapter 846, and was the only report required by the state for this program. Thus, the Commission finds Education Code section 2550.3 imposes a new program or higher level of service for county offices of education for the following one-time activity:

- County offices of education for completion and return of the "'Worksheet for Determining the Adjusted 1998-99 Base Revenue Limit in Accordance with SB 727" to the Superintendent of Public Instruction.

Education Code Section 2550.4 (Count-v Offices of Education).

Education Code section 2550.4, as added by Statutes 1997, chapter 855, [18] provides that effective July 1, 1998, the Superintendent of Public Instruction shall make one-time adjustments to the revenue limits per unit of average daily attendance of each county office of education for certain programs. Those one-time adjustments shall apply for the 1998- 1999 fiscal year, and for each fiscal year thereafter and shall be accomplished by revision of the prior fiscal year revenue limits per unit of average daily attendance. Education Code section 2550.4 further provides:

> If any county superintendent of schools demonstrates to the satisfaction of the Superintendent of Public Instruction that, because of extraordinary circumstances beyond the control of the county office of education, the amount of absences [statutorily] excused in one or more county office programs in fiscal year 1996-97 ... was significantly lower than it would ordinarily have been in comparison to the amount of actual attendance in fiscal year 1996-97, the Superintendent of Public Instruction shall make a compensating adjustment, consistent with the provisions of Section 2 of the Education Code, in the calculation set forth in this section.

Claimants assert that section 2550.4 requires county offices of education to "incur costs in compiling and reporting information to the Superintendent of Public Instruction necessary to

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[16] Letter from Robert D. Miyashiro, Director of CDE Education Finance Division, to County Superintendents of Schools, dated November 18, 1998.

[17] *Ibid,*

[18] Operative January 1, 1998.

receive a Base Revenue Limit adjustment" if they had abnormally low attendance for the 1996- 1997 school year. DOF disagrees with claimants in finding a reimbursable state mandate for section 2550.4. DOF asserts that because "no county office is required to pursue this adjustment, and each county office makes its own determination about whether its excused absences were significantly lower before pursuing this adjustment, the statute does not impose a State-reimbursable mandate as defined under Government Code [section] 175 14."

The Commission finds the mandatory language in Education Code section 2550.4 is directed at the state Superintendent of Public Instruction, not to county superintendents. County superintendents, at their option, may demonstrate to the state that the county office of education had extraordinary circumstances during the base year, 1996-l 997, that warrant an adjustment. Claimants maintain,

> Before the enactment of the test claim legislation, county offices of education were not required to engage in activities to receive a base revenue adjustment. Such adjustments are necessary because after the enactment of the test claim legislation and subsequent attendance recalculations, the newly calculated ADA may be significantly lower than would have ordinarily been calculated but for the test claim legislation.

Claimants' analysis does not conform to the rules of statutory construction that are utilized by the Commission in identifying reimbursable state mandated programs. A test claim statute or executive order only imposes a reimbursable state mandated program if it orders or commands a local agency or school district to engage in an activity or task."

According to the California Supreme Court:

> In statutory construction cases, our fundamental task is to ascertain the intent of the lawmakers so as to effectuate the purpose of the statute. "We begin by examining the statutory language, giving the words their usual and ordinary meaning." If the terms of the statute are unambiguous,. we presume the lawmakers meant what they said, and the plain meaning of the language governs.[20] (Citations omitted.)

Thus, the Commission finds that the plain meaning of the statute creates a duty for the state Superintendent of Public Instruction to engage in certain activities, but merely *permits* county offices of education to pursue an apportionment adjustment, at their discretion. Therefore, the Commission finds that Education Code section 2550.4, as enacted by Statutes 1997, chapter 855, does not impose a new program or higher level of service.

Education Code Section 42238.7 (School Districts).

Education Code section 42238.7, as added or amended by Statutes 1997, chapter 855[21] and Statutes 1998, chapter 846,[22] provides that the governing board of each school district, as a condition of apportionment, shall prepare reports for the Superintendent of Public Instruction for the schools and classes maintained by the district. Not later than May 1, 1998, each school district shall report on what portions of attendance reported for the 1996-l 997 school year

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[19] *Long Beach Unified School Dist., supra,* 225 Cal.App.3d at 174.

[20] *Estate ofGriswald* (200 1) 25 Cal.4th 904, 91 0-9 11.

consisted of excused absences. By September 1, 1998, each school district shall make a report regarding the excused absences for the 1997- 1998 school year. Each report shall be prepared in accordance with instructions and on forms prescribed by the Superintendent of Public Instruction.

DOF, in its comments 'of September 10, 1999, agrees with claimants that Education Code section 4223 8.7 requires school district governing boards to recalculate and re-report attendance information for the 1996- 1997 and 1997- 1998 school years, resulting in a one-time, new reporting activity.

According to the statutory language there are two required reports, both due prior to the effective date of the legislation. However, as described below, correspondence from the California Department of Education (CDE) indicates that the state only required a single report on the 1996- 1997 school year, due following the effective date of the legislation.[23]

On November 18, 1998, the Education Finance Division of the CDE sent a letter to all county superintendents of schools, enclosing "Worksheet EX (New 09/98)," a three-page document fully titled "Worksheet for Determining the Adjusted 1998-99 Base Revenue Limit In Accordance with SB 727."[24] This worksheet cites to the test claim legislation, Senate Bill 727, Statutes 1997, chapter 855 and Senate Bill 1468, Statutes 1998, chapter 846. County superintendents were directed to provide copies of the worksheet to each district in their county. The Commission finds that requiring school districts to complete and return this worksheet was the method of implementation for Education Code section 42238.7, as last amended by Statutes 1998, chapter 846, and was the only report required by the state for this program. Thus, the Commission finds that Education Code section 4223 8.7 imposes a new program or higher level of service for school districts:

- School districts for completion and return of the "Worksheet for Determining the Adjusted 1998-99 Base Revenue Limit in Accordance with SB 727" to the Superintendent of Public Instruction,

Education Code Section 41344 (School Districts and County Offices of Education).

Education Code section 41344, as added by Statutes 1999, chapter 78, section 24,[25] effective, July 7, 1999, and amended by Statutes 2000, chapter 105 8, section 24,[26] provides as follows:

> (a) If, as the result of an audit or review, a local education agency is required to repay an apportionment significant audit exception, the Superintendent of Public Instruction and the Director of Finance, or their designees, within 90 days of the date on which a local education agency receives the final report of the audit or review, shall jointly establish a plan for repayment of state school funds that the

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[21] Operative January 1, 1998.

[22] Operative September 25, 1998.

[23] Letter from Robert D. Miyashiro, Director of CDE Education Finance Division, to County Superintendents of Schools, dated November 18, 1998.

[24] *Ibid.*

[25] Assembly Bill 1115.

[26] Assembly Bill 2907. Amended subdivision (b).

local education agency received on the basis of average daily attendance, or other data, that did not comply with statutory or regulatory requirements that were conditions of the apportionments. At the time the local education agency is notified, the Controller shall also be notified of the repayment plan. The repayment plan shall be established in accordance with the following:

(1) The Controller shall withhold the disallowed amount at the next principal apportionment or pursuant to paragraph (2), unless subdivision (d) applies, in which case the disallowed amount shall be withheld, at the next principal apportionment or pursuant to paragraph (2) following the determination regarding the appeal. In calculating the disallowed amount, the Controller shall determine the total amount of overpayment received by the local education agency on the basis of average daily attendance, or other data., reported by the local education agency that did not comply with one or more statutory or regulatory requirements that are conditions of apportionment.

(2) If the Superintendent of Public Instruction and the Director of the Department of Finance concur that repayment of the full liability in the current fiscal year would constitute a severe financial hardship for the local agency, they may approve a repayment plan of equal annual payments over a period of up to eight years. The repayment plan shall include interest on each year's outstanding balance at the rate earned on the state's short-term pooled investment fund during that year. The Superintendent of Public Instruction and the Director of the Department of Finance shall jointly establish this repayment plan. The Controller shall withhold amounts pursuant to the repayment plan.

(3) If the Superintendent of Public Instruction and the Director of the Department of Finance do not jointly establish a schedule for repayment and notify the State Controller's Office of that repayment schedule within 90 days following the date on which the local education agency received the final report of the audit or review, the State Controller shall withhold the entire disallowed amount determined pursuant to paragraph (1) at the next principal apportionment.

(b) For purposes of computing average daily attendance pursuant to Section 4223 8.5, a local educational agency's prior fiscal year average daily attendance shall be reduced by an amount equal to any average daily attendance disallowed in the current year, by an audit or review, as defmed in subdivision (e).

(c) Notwithstanding any other provision of law, this section may not be waived under any authority set forth in this code except that a local educational agency may request a waiver of strict compliance in accordance with Section 41609.

(d) Within 60 days of the date on which a local education agency receives a final audit report resulting from an audit or review, a local agency may appeal a finding contained in the final report to a panel consisting of the Superintendent of Public Instruction, the Director of the Department of Finance, and a Chief Administrative Officer of the Fiscal Crisis and Management Assistance Team

> established pursuant to Section 42127.8, or one of their designees. Within 90 days of the date on which the appeal is received by the panel, a hearing shall be held at which the local agency may present evidence or arguments if the local education agency believes that the final report contains any finding that was based on errors of fact. A repayment schedule may not commence until the panel reaches a determination regarding the appeal. If the panel determines that the local agency is correct in its assertion in whole or in part, the allowable portion of any apportionment payment that was withheld shall be paid at the next principal apportionment.
>
> (e) As used in this section, "audit or review" means an audit conducted by the Controller's office, an annual audit conducted by a certified public accountant or a public accountant firm pursuant to Section 4 1020, and an audit or review conducted by a governmental agency that provided the local education agency with an opportunity to provide a written response.

On September 27,200 1, claimants amended in the above legislation to this test claim, together with Statutes 1999, chapter 50, Statutes 2000, chapter 52, and Statutes 2001, chapter 106 -- the Budget Acts of 1999, 2000, and 2001, respectively. The budget acts are included as test claim legislation for the line&item appropriations for "contract[s] with the Controller's Office to perform audits of school attendance records."[27]

Claimants' test claim allegations assert that the test claim legislation requires local educational agencies to "[r]espond, meet, and provide information to the State Controller related to audits of a school district's new attendance figures," and to "[p]articipate in the audit appeal process at the administrative and judicial levels as necessary." Claimants argue, "While the State Controller has general authority to audit the fiscal affairs of the state, response to this new audit has become a mandatory downstream activity tied directly to the changes made by the test claim legislation."

The Commission disagrees with this argument. Government Code section, 12410, as last substantively amended by Statutes 1949, chapter 187, provides that "The Controller shall superintend the fiscal concerns of the state . .. and may audit the disbursement of any state money, for correctness, legality and for sufficient provisions of law for payment." In addition, the SCO may make field audits of any claim or disbursement of state money. Thus, the general authority for the SCO to perform audits of entities utilizing state funds is not new. Education Code section 41344 describes the consequences following an audit of a local educational agency's attendance accounting by the SCO, including plans for repayment of funds that were received "on the basis of average daily attendance, or other data, that did not comply with statutory or regulatory requirements that were conditions of the apportionments." DOF asserts that an local educational agency's "attendance accounting is the primary basis for their claim of state funding, and as such, may be audited at any time by the SCO." Accordingly, the Commission finds associated audit costs incurred by a local educational agency are not reimbursable because the agencies are not responding to a new program or higher level of service mandated by the state.

In comments on the May 3, 2002 draft the Commission analysis, claimants argue, "'The focus is not whether a district is *responding* to a new program or higher level of service, the focus is

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[27] Statutes 1999, chapter 50, item 8860-025-0001.

whether the state *imposes* a new program or higher level of service." The Commission agrees with this statement – however, staffs use of the word "responding" was directed to the word usage in claimants' allegations. In the amended test claim narrative claimants argue that the Commission should fmd that a reimbursable state mandated program exists for "the activities necessary to properly respond to State Controller audit requests related to school district attendance figures and reporting systems," and that "response to this new audit has become a mandatory downstream activity."

By "responding" to the SCO's audits related to the disbursement of state moneys, claimants are not responding to a new program or higher level of service mandated by the state; rather, claimants are conducting audit response activities at their option. In addition, the SCO's audits are carried out under the state's long-standing statutory authority to "audit the disbursement of any state money, for correctness, legality and for sufficient provisions of law for payment." The Commission is required to find a reimbursable state mandated program pursuant to article XIII B, section 6, of the California Constitution, "[w]henever the Legislature{ or any state agency mandates a new program or higher level of service on any local government." The court has found that the use of the word "'mandates" is to be understood in the ordinary sense as "orders" or "commands."[28] The statute does not order or command local educational agencies to engage in the activities alleged by the claimants; therefore the legislature is not imposing a new program or higher level of service on school districts or county offices of education.

Claimants maintain that Education Code section 41344, subdivision (d), despite the permissive "may" language of the statute, requires local educational agencies to participate in an audit appeals process because "[s]chool districts faced with reduction based on State Controller attendance audits performed in response to the test claim legislation have no choice but to appeal the decision" with the state's Education Audit Appeal Panel before seeking a judicial remedy. Claimants ask the Comrnission to find an analogy between their test claim allegation that the appeals process results in a reimbursable state mandated program, and an activity included in *Collective Bargaining* Pararneters and Guidelines (CSM-4425). Claimants assert that the activity to receive "reasonable claimant costs associated with a contract dispute . . . when the claimant is the plaintiff in a court suit to appeal a PERB [Public Employment Retirement Board] ruling and the claimant is the prevailing party," is not unlike the activity they are seeking in this test claim. In its comments on the May 3, 2002 draft staff analysis, claimants argue,

> While staff may state that prior Commission decisions are neither binding nor precedential, a directly analogous case cannot be ignored. The claimant asserts that if the participant is found to prevail over an erroneous audit decision that the participant district should receive its costs to be made whole as is the case in the *Collective Bargaining* test claim. If the school district is successful in bringing its appeal, then the activities and costs associated with the appeal are reimbursable.

The California Supreme Court has held that 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.[29] If a decision is not arbitrary and is supported by law, the Cornrnission is free to decide the current test claim allegations in a manner that may not parallel the prior Board of Control

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[28] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d at 174.

[29] *Weiss v. State Board of Equalization* (1953) 40 Cal.2d 772, 776.

decision in *Collective Bargaining.* In this case, the Commission finds that claimants' analysis regarding their lack of choice in participating in an appeals process does not conform to the rules of statutory construction utilized by the Cornmission in identifying reimbursable state mandated programs. Again, a test claim statute or executive order imposes a reimbursable state mandated program if it orders or commands a local agency or school district to engage in an activity or task.[30]

At the September 26, 2002 Commission hearing, claimants made a new argument alleging that the July 3, 2002 appellate decision in *San Diego Unified School District v. Commission on State Mandates* (2002) 99 Cal.App.4th 1270 was directly on point and must be considered as to its impact on the issue of whether the appeals process was mandatory, and therefore reimbursable, or discretionary.[31] Claimants argued, "*San Diego* says that if you have a discretionary activity and then you are told how to do it, it's reimbursable."

Staff asserted that the discretionary expulsion issue and the facts of this claim are distinguishable, In *San Diego,* the court was analyzing two statutes, first one with discretionary, or "may" language, followed by a second statute with mandatory language. In *San Diego,* under Education Code section 489 15, the district was given discretion to expel students under certain circumstances. Then, if the district expels a student, Education Code section 48918 has mandatory language on the expulsion and the due process proceedings. The court stated, "The statutory framework does not permit school districts to conduct discretionary expulsions in alternative methods in which one method results in state-mandated costs and another method does not."[32] In addition, the court found that there were constitutional issues involved in the obligation to maintain a safe campus that separated discretionary expulsions from other case law.

These issues are all factually distinct from the present test claim. Here, there is no mandatory procedure to be followed. At the June 27, 2002 hearing, the Commission heard a statement regarding several audit exception appeal process alternatives, including repaying the money and going to court, concluding that the Legislature did not require districts to go to the Education Audit Appeals Panel. Education Code section 41344, distinct from the pair of statutes analyzed in *San Diego,* only contains discretionary language concerning school districts -- establishing a right for a local agency to appeal an audit finding, not a duty. Finally, a discretionary audit appeals process fails to raise the same constitutional campus safety issues addressed by the court in *San Diego.*

Therefore, the Commission disagrees with claimants' assertion of a reimbursable state mandated program and finds that the plain meaning[33] of Education Code section 4 1344, subdivision (d),

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[30] *Long Beach Unified School Dist., supra,* 225 Cal.App.3d at 174.

[31] The *San Diego* appellate decision is not citable, as the California Supreme Court granted the Commission's petition for review on October 2, 2002. (Cal. Rules of Court, rule 976(d): "Unless otherwise ordered by the Supreme Court, no opinion superseded by a grant of review, rehearing, or other action shall be published." Cal. Rules of Court, rule 977(a): "An opinion of a Court of Appeal or an appellate department of the superior court that is not certified for publication or ordered published shall not be cited or relied on by a court or a party in any other action or proceeding," with exceptions not applicable here.) However, the argument presented at the September 26, 2002 Commission hearing, regarding the impact of the appellate decision on this test claim, is recorded here.

[32] Previously published in *San Diego Unified School District v. Commission on State Mandates (2002) 99* Cal.App.4th 1270, 1286. Review granted and opinion superseded on October 2, 2002.

[33] *Estate of Griswald, supra,* 25 Cal.4th at 9 1 O-9 11.

provides that "a local agency *may* appeal a finding contained in the final report," but in no way requires any such activities.

Furthermore, DOF, in its comments of December 13, 2001, asserts that,

> The appeals process is clearly optional and can be avoided in several ways. For example, [local educational agencies] can avoid an appeals process by adhering to the proper procedures for attendance accounting and reporting, which would avoid an adverse finding. ... Failure to perform tliese tasks can result in [a local educational agency] choosing to take advantage of the appeals process specified in Education Code Section 41344 (d), but that is a choice made by the district, not a mandate reimbursable by the State.

Therefore, Education Code section 41344 fails as a new program or higher level of service on two grounds: first, the authority of the state to make desk or field audits of entities receiving state funds is not new; second, the plain language of the legislation does not require, order or command any new activities on the part of local educational agencies. The Commission finds that neither Education Code section 41344 nor Statutes 1999, chapter 50, Statutes 2000, chapter 52, and Statutes 200 1, chapter 106, imposes a new program or higher level of service upon school districts or county offices of education,

Issue 3: Do Education Code sections 2550.3 and 42238.7 impose "costs mandated by the state" within the meaning of Government Code section 17514?

As indicated above, Education Code sections 2550.3 and 42238.7 impose new programs or higher levels of service for additional average daily attendance accounting and reporting for the following one-time new activities:

- County offices of education for completion and return of the "Worksheet for Determining the Adjusted 1998-99 Base Revenue Limit in Accordance with SB 727" to the Superintendent of Public Instruction. (Ed. Code, § 2550.3.)
- School districts for completion and return of the "Worksheet for Determining the Adjusted 1998-99 Base Revenue Limit in Accordance with SB 727" to the Superintendent of Public Instruction. (Ed. Code, § 42238.7.)

Reimbursement under article XIII B, section 6 is required only if the activities impose "costs mandated by the state." Government Code section 175 14 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. Additional state-mandated reports related to average daily attendance require school districts and county offices of education to incur increased costs related to record review and reporting. Declarations are included with the original and amended test claim filings, stating, "the claimant will/has incurred significantly more than $200.00 to implement these new state-mandated activities."[34] In addition, none of the exceptions to finding costs mandated by the state under Government Code section 17556 apply to these activities. Accordingly, the Commission finds that Education Code section 4223 8.7 imposes costs

[34] Declaration of Jacques Whitfield, General Counsel, Grant Joint Union High School District, amended test claim. See also the Declaration of Agnes Valdez, Deputy Superintendent of Campbell Union High School District, original test claim, and the Declaration of Eric Smith, Deputy Superintendent of San Luis Obispo County Office of Education, supplemental filing date June 26, 2002.

mandated by the state upon school districts, and Education Code section 2550.3 imposes costs mandated by the state upon county offices of education, within the meaning of Government Code section 175 14.

CONCLUSION

The Commission concludes that Education Code section 42238.7 imposes a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the Califomia Constitution and imposes costs mandated by the state pursuant to Government Code section 175 14, for the following one-time new activity:

- School districts for completion and return of the "Worksheet for Determining the Adjusted 1998-99 Base Revenue Limit in Accordance with SB 727" to the Superintendent of Public Instruction, (Ed. Code, § 4223 8 .7.)[35]

The Commission' concludes that Education Code section 2550.3 imposes a new program or higher level of service on county offices of education within the meaning of article XIII B, section 6 of the California Constitution and imposes costs mandated by the state pursuant to Government Code section 175 14, for the following one-time new activity:

- County offices of education for completion and return of the "Worksheet for Determining the Adjusted 1998-99 Base Revenue Limit in Accordance with SB 727" to the Superintendent of Public Instruction. (Ed. Code, § 2550.3.) [36]

The Commission finds that Education Code section 2550.4, as enacted by Statutes 1997, chapter 855, does not impose a new program or higher level of service on county offices of education. The Commission also finds that Education Code section 41344, as added by Statutes 1999, chapter 78, and amended by Statutes 2000, chapter 1058,'and Statutes 1999, chapter 50, Statutes 2000, chapter 52, and Statutes 200 1, chapter 106 do not impose a new program or higher level of service on school districts or county offices of education.

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[35] As amended by Statutes 1997, chapter 855, and Statutes 1998, chapter 846, effective September 25, 1998.

[36] As added by Statutes 1997, chapter 855 and amended by Statutes 1998, chapter 846, effective September 25, 1998.

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.

October 25, 2002, I served the:

Adopted Statement of Decision
Attendance Accounting and Audit Procedures) 98-TC-26, 0 l-TC-04
Campbell Union High School District, Grant Joint Union High School District, and San Luis Obispo County of Education, Claimants
Education Code Sections 2550.3, 2550.4, 41344, 42238.7, and 48216
Statutes 2001, Chapter 106, et al.

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

Mr. Paul C. Minney
Spector, Middleton, Young, & Minney, LLP
7 Park Center Drive
Sacramento, CA 95825

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 October 25, 2002, at Sacramento, California.

VICTORIA SORIANO