BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

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| IN RE TEST CLAIM ON:<br>Education Code Sections 44977 and 44978.1; Statutes 1998, Chapter 30,<br>Filed on August 23 1999,<br>by Palmdale School District, Claimant. | No. 99-TC-02<br>***Differential Pay and Reemployment***<br>PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7<br>*(Adopted on July 31, 2003)* |

**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 14, 2003.

Paula Higashi

PAULA HIGASHI, Executive Director

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| IN RE TEST CLAIM ON:<br>Education Code Sections 44977 and 44978.1; Statutes 1998, Chapter 30,<br>Filed on August 23 1999,<br>by Palmdale School District, Claimant. | No. 99-TC-02<br>***Differential Pay and Reemployment***<br>PROPOSED STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7<br>*(Adopted on July 31, 2003)* |

# STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on May 29, 2003. Dr. Carol Berg appeared for claimant Palmdale School District. Ms. Barbara Taylor and Ms. Susan Geanacou 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 article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission approved the staff analysis for the test claim presented by a 5-O vote.

# BACKGROUND

Claimant, Palmdale School District, submitted a test claim alleging a reimbursable state mandate for school districts for differential pay and reemployment for certificated employees (teachers) on extended sick leave. Prior to the amendment by Statutes 1998, chapter 30, Education Code section 44977 required school districts to pay "differential pay" for up to five months to public school teachers who were absent due to illness or injury. Differential pay is calculated as the difference between the teacher's salary and the cost of a substitute. For example, if a teacher earns $200 per day, and a substitute is paid $75, the differential pay to the absent teacher is $125.

Other Education Code provisions require school districts to provide a minimum of 10 days of annual sick leave to all certificated employees. Any unused sick leave may be accumulated for future use. The amendment to the differential pay statute specifies that the five-month period runs *consecutively*, following the exhaustion of all accumulated sick leave. Prior to the amendment, the statute was subject to the interpretation that the five-month period ran *concurrently* with all accumulated sick leave, following the use of the annual 10 days of sick leave.

The test claim also alleges Education Code section 44978.1, added by Statutes 1998, chapter 30, which provides that when a certificated employee remains unable to return to his or her original

duties due to illness or injury after all sick leave and differential pay is exhausted, the teacher shall, if not placed in another position, be placed on a reemployment list.

**Claimant's Position**

Claimant alleges a reimbursable state-mandated program for the amendment of Education Code section 44977 and the enactment of Education Code section 44978.1 by Statutes 1998, chapter 30. Specifically, claimant alleges that the test claim legislation requires school districts to engage in the following new activities:

- Review eligibility for, process, calculate and pay sick leave differential pay in a manner different than the manner required under prior law;
- Develop and maintain reemployment lists and track reemployment dates for certain certificated employees;
- Identify positions for which an employee eligible for reemployment is qualified and credentialed to perform;
- Reemploy the employee in such a position; and
- Develop or update policies, procedures, and forms to carry out and train personnel on the requirements of Statutes 1998, chapter 30.

Claimant concludes that none of the Government Code section 17556 exceptions to finding costs mandated by the state apply to the test claim legislation. The claimant specifically asserts that there are no other federal or state constitutional provisions, statutes or executive orders impacted.

**State Agency Position**

Department of Finance's (DOF's) October 19, 200 1 response to the test claim allegations notes that "school districts have been required to provide qualifying certificated employees with differential pay since the enactment of" Statutes 197 1, chapter 1102, or prior to January 1, 1975, therefore state reimbursement of the costs for processing differential pay is not required. DOF's other comments regarding the claimant's identified reimbursable activities are summarized below:

- School districts are not eligible for reimbursement of the costs of reviewing new legislation, as this was a required activity prior to January 1, 1975;
- To the extent school districts are required to *modify* existing policies, procedures, computer programs and forms regarding sick leave and differential pay to conform to amendments of Statutes 1998, chapter 30, reimbursement is warranted;
- School districts are eligible for the reimbursement of costs for the development, preparation and adoption of policies, procedures, computer programs and forms to track the reemployment of certificated employees who are placed on a re-employment list;
- Determination of whether an employee is medically able to return to work is made by the employee's physician; there are no school district costs for this alleged activity; and

- Although reimbursement for the administrative costs associated with reemployment is allowable, DOF does not believe districts are entitled to reimbursement for the salaries and benefits of certificated employees who are reemployed.

On May 23, 2003, the Commission received comments from DOF stating general agreement with the findings in the staff analysis, but asking for greater specificity in the identified reimbursable activities. At the May 29, 2003 hearing, Commissioners acknowledged DOF's comments and directed staff to review them when developing parameters and guidelines.

## 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.[1] 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.[2] 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.[3]

**Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?[4]**

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

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

[2] *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.

[3] Government Code section *175* 14; *County of Sonoma v. Commission on State Mandates (2000) 84* Cal.App.4th 1265, 1284; *County of Fresno v. State of California* (1991) 53 Cal.3d 482,487.

[4] 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."

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?

Here, the Commission finds that the test claim legislation 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 administrative activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Accordingly, the Commission finds that administrative activities for differential pay and reemployment for public school teachers on extended sick leave constitutes a "program" and, thus, is subject to article XIII B, section 6 of the California Constitution.[7]

**Issue 2: Does the test claim legislation 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?**

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 and costs for differential pay and reemployment for public school teachers on extended sick leave. 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 the claimed activities, and whether such activities constitute a new program or higher level of service when compared to prior law.

Education Code sections 44977 and 44978.1, as added by Statutes 1998, chapter 30, are analyzed below for whether they impose mandatory new activities upon school districts.

***Test Claim Statutes* :**

*Education Code section* 44977. This Education Code section, as amended by Statutes 1998, chapter 30[8] provides:

> (a) During each school year, when a person employed in a position requiring certification qualifications has exhausted all available sick leave and continues to be absent on account of illness or accident for an additional period of five school months, whether or not the absence arises out of or in the course of the ernployment of the employee, the amount deducted from the salary due him or her for any of the additional five months in which the absence occurs shall not exceed the sum that is actually paid a substitute to fill the position during his or her absence or, if no substitute employee was employed, the amount that would have been paid to the substitute had he or she been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

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

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

[7] The Commission need not address the issue of whether the claimed activities provide a service to the public.

[8] Effective and operative January 1, 1999.

(b) For purposes of subdivision (a):

(1) The sick leave, including accumulated sick leave, and the five-month period shall run consecutively.

(2) An employee shall not be provided more than one five-month period per illness or accident. However, if a school year terminates before the five- month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year.

(c) The governing board of every school district shall adopt a salary schedule for substitute employees. The salary schedule shall indicate a salary for a substitute for all categories or classes of certificated employees of the district.

(d) Except in a district where the governing board has already adopted a salary schedule for substitute employees of the district, the amount paid the substitute employee during any month shall be less than the salary due to the absent employee.

(e) When a person employed in a position requiring certification qualifications is absent from his or her duties on account of illness for a period of more than five school months, or when a person is absent from his or her duties for a cause other than illness, the amount deducted from the salary due him or her for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. The rules and regulations shall not conflict with rules and regulations of the State Board of Education.

(f) Nothing in this section shall be construed so as to deprive any district, city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for persons acquiring certification qualifications.

(g) This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district.

The 1959 Education Code section 13467, as amended by Statutes 197 1, chapter 1102, provided:

When a person employed in a position requiring certification qualifications is absent from his duties on account of illness or accident for a period of five school months or less, whether or not the absence arises out of or in the course of the employment of the employee, the amount deducted from the salary due him for any month in which the absence occurs shall not exceed the sum which is actually paid a substitute employee employed to fill his position during his absence or, if no substitute employee was employed, the amount which would have been paid to the substitute had he been employed. The school district shall make every reasonable effort to secure the services of a substitute employee.

The governing board of every school district shall adopt a salary schedule for substitute employees. The salary schedule shall indicate a salary for a substitute for all categories or classes of certificated employees of the district.

> Excepting in a district the governing board of which has adopted a salary schedule for substitute employees of the district, the amount paid the substitute employee during any month shall be less than the salary due the employee absent from his duties.
>
> When a person employed in a position requiring certification qualifications is absent from his duties on account of illness for a period of more than five school months, or when a person is absent from his duties for a cause other than illness, the amount deducted from the salary due him for the month in which the absence occurs shall be determined according to the rules and regulations established by the governing board of the district. Such rules and regulations shall not conflict with rules and regulations of the State Board of Education.
>
> Nothing in this section shall be construed so as to deprive any district, city, or city and county of the right to make any reasonable rule for the regulation of accident or sick leave or cumulative accident or sick leave without loss of salary for persons acquiring certification qualifications.
>
> This section shall be applicable whether or not the absence from duty is by reason of a leave of absence granted by the governing board of the employing district.

The statute was renumbered by Statutes 1976, chapter 10 10 as Education Code section 44977, which continued in effect without substantive amendment until Statutes 1998, chapter 30.[9] The Commission finds that when a statute is renumbered or reenacted, only substantive changes to the law creating new duties or activities meets the criteria for finding a reimbursable state mandate.[10] Thus, only substantive changes to Education Code section 44977 by Statutes 1998, chapter 30, not the renumbering of former 1959 Education Code section 13467, imposes a potential reimbursable state-mandated program.

The primary amendment made by Statutes 1998, chapter 30, is the addition of the provision, that "[t]he sick leave, including accumulated sick leave, and the five-month [differential pay] period shall run consecutively." Prior to this amendment, the statute was subject to alternative interpretations. Education Code section 44978, in addition to providing a minimum of 10 days of annual sick leave for full-time certificated employees, states that "Section 44977 relating to compensation, shall not apply to the first 10 days of absence on account of illness or accident."

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[9] The basic requirement to provide five months of differential pay to teachers absent on account of illness or accident was in effect well before the enactment of the test claim legislation, but was renumbered or restated in a "newly enacted" code section by Statutes 1976, chapter 1010.

[10] Education Code section 3 states, "The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments."

Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time. *In re Martin's Estate (1908)* 153 Cal. 225,229. See also 15 Ops.Cal.Atty.Gen. 49 (1950). Opinions of the Attorney General, while not binding, are entitled to great weight. *(Henderson v. Board of Education* (1978) Cal.App.3d 875, 883.)

Previously, differential pay was calculated by many school districts to run for a maximum of five months immediately following the exhaustion of the annual sick leave allotment (waiting period), and concurrently with any accumulated sick leave the teacher may have carried over from previous years. This interpretation was supported by case law in the First and Second District Courts of Appeal and several Attorney General opinions. (*Napa Valley Educators ' Assn. v. Napa Valley Unified School Dist. (1987)* I94 Cal.App.3d 243; *Lute v. Covina Valley Unified School Dist.* (1988) 202 Cal.App.3d 118 I; 29 Ops.Atty.Gen. 62, 63 (1957); 30 Ops.Atty.Gen. 307, 309 (1957); 53 Ops.Atty.Gen. 111, 113 (1970).)

Claimant asserts that Education Code section 44977 requires school districts to review eligibility for, process, calculate and pay sick leave differential pay in a manner different than the manner required under prior law; develop or update policies, procedures, and forms to carry out and train personnel on the requirements of the law.

DOF argues that since "school districts have been required to provide qualifying certificated employees with differential pay since the enactment of' Statutes 197 1, chapter 1102, or prior to January 1, 1975, state reimbursement of the costs for processing differential pay is not required. DOF concurs that the statutory amendment results in new activities by requiring school districts to *modify* existing policies, procedures, computer programs and forms regarding sick leave and differential pay.

The Commission finds Education Code section 44977 imposes a new program or higher level of service for the following administrative activity performed by school districts:

- When calculating differential pay, the sick leave, including accumulated sick leave, and the five-month period of differential pay shall run consecutively. (One-time administrative activity for shifting the calculation of differential pay from running concurrently to consecutively with accumulated sick leave.)

Although elements of Education Code section 44977, as amended by Statutes 1998, chapter 30, are recognized by the Commission to impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution, each of claimant's allegations must satisfy the scheme established in the Constitution, and as interpreted by the courts. Here, claimant proposes reimbursement for the payment of differential pay to certificated employees who continue to be absent after five months due to ilhless or accident *and* had accumulated sick leave available at the beginning of the illness or injury. The claimant concludes that the reimbursable period is equal to the lesser of : (a) the number of days the employee was absent beyond five months; (b) the number of days of accumulated sick leave used; or (c) five months.

When a teacher has accumulated sick leave available and remains out on leave due to illness or injury longer than five months after the initial waiting period, the district incurs greater costs for differential pay compared to the prior interpretation of concurrent running of accumulated sick leave and differential pay. For example, under the amended statute, if a teacher has 100 days accumulated sick leave, first the teacher satisfies the waiting period under Education Code section 44978, then uses all accumulated sick leave, and finally receives differential pay for five months or until the teacher returns to work. Under the forrner statutory interpretation, by the time that same teacher used up all of his or her accumulated sick leave, five months entitlement to differential pay, running concurrently, would never be available. When the injury or illness runs five months or less after the waiting period, or when the teacher has no accumulated sick

leave available, there is no difference between the prior interpretation and the amended statute in either application or cost to the district for differential pay.

However, based on the case law described below, the Commission finds that the change in the calculation of five months of differential pay from concurrent to consecutive with accrued sick leave, while it may result in an increased cost to school districts in some instances, does not require an increased level of service to the public.

The courts have consistently held that additional costs alone do not equate to a higher level of service. In *County* of *Los Angeles,* the California Supreme Court rejected the argument that the definition of "increased level of service" as "additional costs" mandated on local governmental agencies continued to apply to mandates determinations following the repeal of former Revenue and Taxation Code section 223 1, subdivision (e). The Court stated,

> If the Legislature had intended to continue to equate "increased level of service" with "'additional costs," then the provision would be circular: "costs mandated by the state" are defined as "increased costs" due to an "increased level of service," which, in turn, would be defined as "additional costs." We decline to accept such an interpretation. [11]

The Court then went on to examine the meaning of article XIII B, section 6, finding that "it is apparent that the subvention requirement for increased or higher level of service is directed to state mandated increases in the services provided by local agencies in existing 'programs.'"[12] Furthermore, "Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage – costs which all employers must bear – neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services."[13]

The Court in *County of Los Angeles* was making a mandate determination on amended Labor Code provisions related to workers' compensation, a law that impacts public and private employers alike. However, the *court* in *City of Anaheim v. State of California* dealt with costs from a statutory change to the Public Employees Retirement System.[14] The appellant's (City's) argument was since the statute "specifically dealt with pensions for public employees, it imposed unique requirements on local governments that did not apply to all state residents or entities."[15] Nonetheless, the court concluded that "[s]uch an argument, while appealing on the surface, must fail."[16] After citing the California Supreme Court in *County of Los Angeles*, the court in *City of Anaheim* concluded, "Similarly, City is faced with a higher cost of compensation to its employees. *This is not the same as a higher cost ofproviding services to the public.*"[17] (Emphasis added.) Further, in *City of Richmond v. Commission on State Mandates* (1998) 64

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[11] *County of Los Angeles, supra, 43* Cal.3d at pages 54-55.

[12] *Id.* at page 56.

[13] *Id.* at page 6 1.

[14] *City of Anaheim v. State of California (1987)* 189 Cal.App.3d. 1478.

[15] *Id.* at pages 1483-1484.

[16] *Id.* at page 1484.

[17] *Ibid.*

Cal.App.4th 1190, 1194, regarding the claim that requiring PERS and workers compensation death benefits for a particular group of public employees resulted in a reimbursable state mandate, the court upheld the trial court's finding that the statute '"created an increased cost but not an increased level of service by local governments."

The Commission finds these cases answer the issue here in which the cost of a particular benefit to public employees is increased in certain circumstances, but there is no concomitant increase in the level of service to the public. Therefore, the Commission finds no new program or higher level of service within the meaning of article XIII B, section 6, for any increased costs for the amount of differential pay compensation when it is calculated consecutively, rather than concurrently, with accumulated sick leave.

*Education Code section 449 78.1.*

This Education Code section, as added by Statutes 1998, chapter 30[18] provides:

> When a certificated employee is not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the end of the five-month differential pay period, the employee shall, if not placed in another position, be placed on a reemployment list. The list shall last for 24 months for probationary employees, or 39 months for perrnanent employees. When the employee is medically able, they shall be returned to a position for which they are credentialed and qualified. The 24-month or 39-month reemployment period shall begin at the end of the five-month differential pay period described in Education Code section 44977.

Claimant asserts that Education Code section 44978.1 requires school districts to develop and maintain reemployment lists and track reemployment dates for certain certificated employees; identify positions for which an employee eligible for reemployment is qualified and credentialed to perform; and reemploy the employee in such a position; and develop or update policies, procedures, and forms to carry out and train personnel on the requirements of the law.

Department of Finance agrees with claimant that Education Code section 44978.1 requires school districts to track the reemployment of certificated employees who are placed on a reemployment list, resulting in new activities. However, regarding some of the other activities and costs alleged by claimant, DOF asserts that determination of whether an employee is medically able to return to work is made by the employee's physician; there are no school district costs for this alleged activity; and, although reimbursement for the administrative costs associated with reemployment is allowable, districts are not entitled to reimbursement for the salaries and benefits of certificated employees who are reemployed.

Placing certificated employees who are not medically able to resume duties on a 24 or 39-month reemployment list, pursuant to Education Code section 44978.1, is a new activity mandated by the state. However, the Education Code includes several other similar reemployment statutes, including Education Code section 45 192, which requires that classified employees be placed on a 39-month reemployment list following the exhaustion of all sick leave and vacation time. There are also similar reemployment statutes for certificated and classified employees who have been laid off. (Ed. Code, §§ 44956, 44298.) Thus, in order to implement the new requirements of

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[18] Effective and operative January 1, 1999.

Education Code section 44978.1, school districts will need to modify existing policies and procedures for other categories of reemployment, and establish and maintain a reemployment list for the statutory period for certificated employees who are not medically able to resume the duties of a teacher.

DOF asserts that districts are not entitled to reimbursement for the salaries and benefits of certificated employees who are reemployed. Education Code section 44978.1 does not require school districts to create a *new* position for a teacher on the reemployment list, therefore any costs for the payment of salaries or benefits for reemployed teachers are not reimbursable. As discussed above in reference to the amended differential pay statute, the courts have found that "Bearing the costs of salaries, unemployment insurance, and workers' compensation coverage - costs which all employers must bear - neither threatens excessive taxation or governmental spending, nor shifts from the state to a local agency the expense of providing governmental services."[19] Any cost differentials for salary and benefits between filling a position with a teacher on a reemployment list compared with using a new hire are not costs subject to subvention by the state pursuant to this statute.

Thus, the Commission finds Education Code section 44978.1 imposes a new program or higher level of service for the following activities performed by school district administration:

- When a certificated employee is not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the five-month differential pay period described in Education Code section 44977 has been exhausted, place the employee, if not placed in another position, on a reemployment list for 24 months for probationary employees, or 39 months for permanent employees. (This activity includes the one-time activity of establishing a reemployment list for this purpose, and ongoing activities of maintaining the list.)
- When the employee is medically able, return the employee to a position for which he or she is credentialed and qualified. (This activity includes the administrative duties required to process the reemployment paperwork, but not the costs of salary and benefits for the employee once they return to work.)

**Issue 3: Does the test claim legislation found to require 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 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. Claimant states, "[t]he estimated costs which result from the mandate exceed $200 for Fiscal Year 1998-99 and in subsequent fiscal years," and none of the Government Code section 17556 exceptions apply.

Government Code section 17556 presents a list of seven exceptions to finding "costs mandated by the state," even after making a finding of a required new program or higher level of service.

[19] County *of Los Angeles, supra,* 43 Cal.3d at page 61.

Government Code section 17556, subdivision (a), states the Commission shall not find costs mandated by the state, if:

> The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority. A resolution from the governing body or a letter from a delegated representative of the governing body of a local agency or school district which requests authorization for that local agency or school district to implement a given program shall constitute a request within the meaning of this paragraph.

Senate Bill 1019 (Stat, 1998, ch. 30) was sponsored by the Association of California School Administrators (ACSA), a voluntary organization of education administrators, including superintendents and principals. It is impossible to determine from the documentation in the bill file which members of the ACSA supported the bill, and in turn which members, if any, had the delegated authorization of their school district governing boards to support the bill. As an example, the bill file also includes a letter from the Assistant Superintendent of Fallbrook Union Elementary School District, stating that the bill is supported by the ACSA, "and I am an ACSA member, but I think that passage of the bill would be a mistake."[20] This letter, on school district letterhead, although in this case in opposition rather than in support of the bill, is more representative of a "request" as described in subdivision (a). Therefore, although the membership of the ACSA likely includes individuals who might be considered "delegated representatives" if they sponsored the legislation on behalf of their school districts in their capacity as superintendents, the Commission finds that the sponsorship of the legislation by the lobbying arm of this statewide organization does not constitute a "request" within the meaning of Government Code section 175 5 6, subdivision (a).

Government Code section 17556, subdivision (b) provides an exception to reimbursement if "[t]he statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts." This exception does not apply to this test claim because the 1998 amendment to Education Code section 44977 was in direct opposition to earlier case law interpreting differential pay as running *concurrently* with accumulated sick leave.

The Commission agrees that 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 the activities impose costs mandated by the state within the meaning of Government Code section 17514.

## CONCLUSION

The Commission concludes that Education Code sections 44977 and 44978.1, as added or amended by Statutes 1998, chapter 30, effective and operative on January 1, 1999, impose new programs or higher levels of service 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, for the following specific new activities:

[20] Letter dated March 9, 1998.

- When calculating differential pay, the sick leave, including accumulated sick leave, and the five-month period of differential pay shall run consecutively. (One-time administrative activity for shifting the calculation of differential pay from running concurrently to consecutively with accumulated sick leave.) (Ed. Code, § 44977.)
- When a certificated employee is not medically able to resume the duties of his or her position following the exhaustion of all sick leave and the five-month differential pay period described in Education Code section 44977 has been exhausted, place the employee, if not placed in another position, on a reemployment list for 24 months for probationary employees, or 39 months for permanent employees. (This activity includes the one-time activity of establishing a reemployment list for this purpose, and ongoing activities of maintaining the list.) (Ed. Code, § 44978.1.)
- When the employee is medically able, return the employee to a position for which he or she is credentialed and qualified. (This activity includes the administrative duties required to process the re-employment paperwork, but not reimbursement of salary and benefits for the employee once they return to work.) (Ed. Code, § 44978.1.)

The Commission denies any remaining alleged costs or activities because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

## 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 958 14,

August 14, 2003, I served the:

**Adopted Statement of Decision**
***Differential Pay and Reemployment,*** 99-TC-02
Palmdale School District, Claimant
Education Code Sections 44977 and 44978.1
Statutes 1998, Chapter 30

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

Dr. Carol Berg
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

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 14, 2003, at Sacramento, California.

Victoria Soriano

VICTORIA SORIANO