

COMMISSION ON STATE MANDATES

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January 8, 2007

Ms. Nancy Gust
SB-90 Sheriff's Department
County of Sacramento
711 G Street, Room 405
Sacramento, CA 95814

And Interested Parties and Affected State Agencies (See Enclosed Mailing List)

RE: Final Staff Analysis, Proposed Statement of Decision, and Hearing Date
Training Requirements for Instructors and Academy Staff, 02-TC-03
California Code of Regulations, Title 11, Sections 1001, 1052, 1053, 1055, 1070, 1071,
and 1082 (Register 2001, No. 29)
County of Sacramento, Claimant

Dear Ms. Gust:

The final staff analysis and proposed Statement of Decision for this test claim are enclosed for your review.

Hearing

This test claim is set for hearing on **Thursday January 25, 2007** at 9:30 a.m. in Room 126, State Capitol, Sacramento, CA. Please let us know in advance if you or a representative of your agency will testify at the hearing, or if other witnesses will appear.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission Office at least five to seven *working* days prior to the meeting.

Please contact Deborah Borzelleri at (916) 322-4230 if you have questions.

Sincerely,

A handwritten signature in cursive script that reads "Paula Higashi".

PAULA HIGASHI
Executive Director

Enc. Draft Staff Analysis
Proposed Statement of Decision

MAILED: Mail List FAXED: _____
DATE: 1/2/07 INITIAL/LD _____
CHRON: _____ FILE: _____
WORKING BINDER: _____

ITEM 7
TEST CLAIM
FINAL STAFF ANALYSIS

California Code of Regulations, Title 11,
Sections 1001, 1052, 1053, 1055, 1070, 1071, and 1082
(Register 2001, No. 29)

Training Requirements for Instructors and Academy Staff

02-TC-03

County of Sacramento, Claimant

EXECUTIVE SUMMARY

This test claim addresses regulations adopted by the Commission on Peace Officer Standards and Training ("POST") that require specified training of certain POST instructors and key staff of POST training academies.

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.

The test claim poses the following question:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

The Test Claim Regulations Do Not Impose a State-Mandated Program on Local Agencies

Although the test claim regulations require specified persons involved in POST training to engage in certain activities, staff finds that the requirements flow from an initial discretionary decision by the local agency to participate in POST, and another discretionary decision to provide POST-certified training or establish an academy and employ training staff. Therefore, the test claim regulations do not constitute a state-mandated program and are not subject to article XIII B, section 6.

Conclusion

Staff finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

STAFF ANALYSIS

Claimant

County of Sacramento

Chronology

08/06/02 County of Sacramento filed test claim with the Commission on State Mandates ("Commission")

09/13/02 The Department of Finance submitted comments on test claim with the Commission

10/31/02 The Commission on Peace Officer Standards and Training ("POST") submitted comments on the test claim with the Commission

12/08/06 Commission staff issued draft staff analysis

01/11/07 Commission staff issued final staff analysis

Background

This test claim addresses POST regulations that require specified training of certain POST instructors and key staff of POST training academies.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.¹ The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.² Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.³

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.⁴ POST states the following:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement.⁵

¹ Penal Code section 13500 et seq.

² *About California POST*, <<http://www.POST.ca.gov>>.

³ Penal Code sections 13522 and 13523.

⁴ Penal Code sections 13510, 13510.1, 13510.5, and 13511; California Code of Regulations, Title 11, section 1053.

⁵ *Training, Certificates & Services: Overview*, <<http://www.POST.ca.gov>>.

A POST participating agency can offer its own in-house POST-certified training, or send its personnel to POST-certified training institutions operated by other entities, such as community colleges or other law enforcement agencies.⁶

On March 26, 2001, POST issued Bulletin number 01-05 entitled "Proposed Regulatory Action: Training Requirements for Instructors and Academy Staff of Specialized Training Courses." In that bulletin, POST stated:

For years, the training community has shared an informal expectation that persons who instruct in certain high risk/liability areas should attend a POST-certified instructor development course (or an equivalent one) on the related subject area. The same expectation has been maintained for certain key academy staff, and has, in fact, been formalized in the *POST Basic Course Management Guide*. The pertinent POST-certified instructor development courses are listed in the *POST Catalog of Certified Courses*. The proposed regulations also include provisions for equivalency determinations and exemptions from the training requirements.

Test Claim Regulations

POST subsequently adopted the regulations proposed in Bulletin number 01-05, which are the subject of this test claim.⁷ The regulations require that, effective July 1, 2002, primary instructors⁸ of designated specialized training courses complete a specified training standard, or its equivalent, prior to instructing in the specialized subject.⁹ Instructors of specialized training that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.¹⁰ A process was also established to allow presenters of the specialized courses to perform an equivalency evaluation of non-POST-certified training to meet the minimum training standard for the specialized subject.¹¹ Presenters of the specialized courses are required to maintain documentation demonstrating satisfaction of the minimum training standard by their instructors who teach any of the specialized courses.¹²

⁶ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

⁷ The test claim was filed with the Commission on August 6, 2002, on regulations in effect at that time. The subject regulations have subsequently been modified, however, those modified regulations have not been claimed and, thus, Commission staff makes no finding with regard to them.

⁸ "Primary instructor" is an individual responsible for the coordination and instruction for a particular topic. The responsibility includes oversight of topic content, logistics, and other instructors. (Cal. Code Regs., tit. 11, § 1001, subd. (aa))

⁹ California Code of Regulations, Title 11, section 1070, subdivision (a).

¹⁰ *Ibid.*

¹¹ California Code of Regulations, Title 11, section 1070, subdivision (b).

¹² California Code of Regulations, Title 11, section 1070, subdivision (c).

The test claim regulations also require that Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete specified minimum training standards within one year from the date of appointment to the position.¹³ Academy Directors are required to maintain documentation demonstrating satisfaction of the minimum training standard for the designated staff position.¹⁴

Three additional requirements are set forth in the test claim regulations with regard to specialized course instructors and Academy instructors. First, qualifications of certain academy staff, in addition to other instructors and coordinators, must now be evaluated by POST in requests for course certification.¹⁵ Second, specified elements of instructor resumes must now be provided for course certification requests.¹⁶ And third, certificates of completion must be issued by presenters to students who successfully complete POST-certified instructor development courses listed in section 1070, the Academy Director/Coordinator Workshop and the Recruit Training Officer Workshop.¹⁷

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Claimant's Position

The claimant asserts that the test claim regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Claimant asserts that development costs commencing in fiscal year 2001-2002 for the following activities will be incurred and are reimbursable:

¹³ California Code of Regulations, Title 11, section 1071, subdivision (a). Content for the courses for each staff position is specified in section 1082.

¹⁴ California Code of Regulations, Title 11, section 1071, subdivision (b).

¹⁵ California Code of Regulations, Title 11, section 1052, subdivision (a)(2).

¹⁶ California Code of Regulations, Title 11, section 1053, subdivision (a)(2).

¹⁷ California Code of Regulations, Title 11, section 1055, subdivision (d).

1. Staff time to complete or update any necessary general, operations, or special orders as required.
2. Staff time to compile information to be distributed to instructors and key staff informing them of changes in regulations and what information they need to provide such as updated resumes, completed class certificates, etc.
3. Staff time to collect, review for completeness and evaluate contents of current, and any new, instructor and key academy staff information packages turned in.
4. Staff time to review information submitted for equivalency evaluation as instructor or key staff.
5. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
6. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
7. Staff time to provide required Basic Instructor Development course to new instructors.
8. Purchase of necessary computer hardware, software and any necessary programming services to set up database or modify existing database to track information on #6 above.
9. Staff time to enter information into database to track class, individual, instructor, academy staff, certificate information and any other data required by POST. Database to be used for annual renewals, to provide POST information as necessary and during any audits of the program.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Develop or update training for data entry, report management and required notices in the database.
13. Meet and confer with POST representatives.
14. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, estimated costs for staff time are \$26,298 and estimated costs for computer hardware, software and programming services are "unknown at this time but could range from \$5,000 - \$20,000."

Claimant asserts that the following ongoing costs will be incurred and are reimbursable:

1. Staff time to collect, review for completeness and evaluate contents of new instructor and key academy staff resumes.
2. Staff time to collect, review for completeness and evaluate contents of annual renewal packages of instructor and key academy staff resumes.
3. Staff time to review information submitted for equivalency evaluation as instructor or key academy staff.

4. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
5. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
6. Staff time to provide required Basic Instructor Development course to new instructors.
7. Staff time to compile information to be distributed to instructors and key staff informing them of any changes to these regulations.
8. Staff time to enter information into database to track class, individual, instructor, academy staff and certificate information and any other data required by POST.
9. Staff time to fill out required certificates.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Staff time to meet and confer with POST representatives.
13. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, claimant estimates ongoing costs of \$25,000 per year.

Position of Department of Finance

The Department of Finance stated in its comments that:

As the result of our review, we have concluded that the [test claim regulations] may have resulted in a higher level of service for an existing program. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

Position of POST

POST stated in its comments that it believes the test claim regulations do not impose a new program or higher level of service within an existing program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514.

First, under Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

Second, any law enforcement agency voluntarily participating in the POST program *may* seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. There is no requirement for a participating agency to have POST-certified training courses. Since the test claim regulations affecting instructor/academy staff training

requirements only apply to POST-certified training institutions, there is no requirement for the state to reimburse for such costs under the Government Code or the California Constitution.

Third, the new POST training requirements for instructors and academy staff are worded in such a way that they are directed to the individual instructor and academy staff members, not the training institutions. POST-certified training institutions are free to require applicants to complete this training on their own at their own expense. If POST-certified training institutions voluntarily provide their staff with this training, it is no reason to expect the state to reimburse for these costs.

Since POST has facilitated the ready availability of this instructor/academy staff training by certifying the training to virtually any POST-certified training institution that can demonstrate a need and capability, law enforcement trainers in the POST program can conduct much of this required training within their own facilities without sending their personnel away.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution¹⁸ recognizes the state constitutional restrictions on the powers of local government to tax and spend.¹⁹ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."²⁰ 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.²¹ In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.²²

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

¹⁸ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

¹⁹ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²⁰ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²¹ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²² *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

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.²³ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.²⁴ A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."²⁵

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁶

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁷ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."²⁸

The analysis addresses the following issue:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

Issue 1: Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

In order for the test claim regulations to impose a reimbursable state-mandated program under article XIII B, section 6, the language must order or command a local agency to engage in an activity or task. If the language does not do so, then article XIII B, section 6 is not triggered.

Do the test claim regulations mandate any activities?

The test claim regulations require the following activities:

1. As of July 1, 2002, primary instructors of designated specialized POST training courses must complete a specified training standard, or its equivalent, prior to instructing in the subject.

²³ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

²⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

²⁶ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

²⁷ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁸ *County of Sonoma*, *supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

2. Instructors of designated specialized POST training courses that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.
3. Presenters of specialized courses must maintain documentation demonstrating their instructors who teach any of the specialized courses have satisfied the minimum training standard, and such documentation shall be made available for POST inspection upon request.
4. Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete the specified minimum training standards for their positions within one year from the date of appointment.
5. Academy Directors shall maintain documentation demonstrating satisfaction of the minimum training standard for each designated staff position, and such documentation shall be made available for POST inspection upon request.
6. Any person or organization desiring to have a course certified by POST shall now provide instructor resumes in addition to other information previously required.
7. Any presenter of a POST-Certified instructor development course, or any presenter of the Academy Director/Coordinator Workshop or Recruit Training Officer Workshop, shall issue certificates to students who successfully complete the training.

Thus, the plain language of the test claim regulations does require specified persons involved in POST training to engage in certain activities. However, based on the following analysis, staff finds that the requirements flow from the *initial discretionary decisions* by the local agency to become a member of POST, and to provide POST-certified training or establish a POST training academy. Therefore, the test claim regulations do not constitute a state-mandated program within the meaning of article XIII B, section 6.

POST was created in 1959 “[f]or the purpose of raising the level of competence of local law enforcement officers ...”²⁹ To accomplish this purpose, POST has the authority, pursuant to Penal Code section 13510, to adopt rules establishing minimum standards relating to the physical, mental, and moral fitness of peace officers, and for the training of peace officers. However, these rules apply only to those cities, counties, and school districts that participate in the POST program and apply for state aid.³⁰ If the local agency decides to file an application for state aid, the agency must adopt an ordinance or regulation agreeing to abide by POST rules and regulations.³¹ Not all local agencies have applied for POST membership,³² nor do all local agencies provide POST-certified training. Nor is there any state statute, or other state law, that requires local agencies to participate in the POST program or provide POST-certified

²⁹ Penal Code section 13510.

³⁰ Penal Code section 13520.

³¹ Penal Code section 13522.

³² POST’s website at http://www.post.ca.gov/library/other/agency_page.asp lists law enforcement agencies and participation status.

training. Moreover, consistent with POST's long standing interpretation of the Penal Code, POST's regulations state that participation in the POST program is voluntary.³³ POST stated the following in its comments on this test claim:

[U]nder Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

With regard to providing training, section 13511, subdivision (a), states that, "[i]n establishing standards for training, [POST] shall, so far as consistent with the purposes of this chapter, permit required training to be obtained at institutions approved by [POST]." On its website at <http://www.post.ca.gov/training/default.asp>, POST gives an overview of Training, Certificates & Services it provides which states:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement....

In comments on this test claim, POST also stated that:

[A]ny law enforcement agency voluntarily participating in the POST program may seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. The point here is that there is no requirement for a participating agency to have POST-certified training courses....³⁴

Thus, according to the Penal Code, and as the Penal Code provisions are interpreted by POST, participating in the POST program,³⁵ obtaining POST certification of training courses and providing POST-certified training are discretionary decisions on the part of the training provider. The courts have found it is a well-established principle that "contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight; and courts will not depart

³³ California Code of Regulations, title 11, section 1010, subdivision (c).

³⁴ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

³⁵ California Code of Regulations, title 11, section 1010, subdivision (c).

from such construction unless it is clearly erroneous or unauthorized.”³⁶ Staff finds no other provision in statute or regulation to contradict POST’s interpretation of the Penal Code.

In the *Kern High School Dist.* case, the California Supreme Court held that the requirements imposed by a test claim statute are not state-mandated if the claimant’s participation in the underlying program is voluntary.³⁷ The court stated:

[T]he core point ... is that activities undertaken at the option or discretion of a local governmental entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds – even if the local entity is obliged to incur costs as a result of its discretionary decision to participate in a particular program or practice. [Citing *City of Merced v. State of California* (1984) 153 Cal.app.3d 777, 783.]³⁸

The cases have further found that, in the absence of strict legal compulsion, a local agency might be “practically” compelled to take an action thus triggering costs that would be reimbursable. In the case of *San Diego Unified School Dist.*, the test claim statutes required school districts to afford to a student specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.³⁹ The Supreme Court held that hearing costs incurred as a result of statutorily required expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.⁴⁰ Regarding expulsion recommendations that were discretionary on the part of the district, the court acknowledged the school district’s arguments, stating that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement to provide safe schools.⁴¹ Ultimately, however, the Supreme Court decided the discretionary expulsion issue on an alternative basis.⁴²

In summary, where no “legal” compulsion is set forth in the plain language of a test claim statute or regulation, the courts have ruled that at times, based on the particular circumstances, “practical” compulsion might be found. Here, as noted above, participation in the underlying POST program and providing POST-certified training is voluntary, i.e., no legal compulsion exists. Nor does staff find any support for the notion that “practical” compulsion is applicable in the instant case. The test claim regulations do not address a situation in any way similar to the circumstances in *San Diego Unified School Dist.*, where the expulsion of a student might

³⁶ *State Compensation Insurance Fund v. Workers’ Compensation Appeals Board* (1995) 37 Cal.App.4th 675, 683 (citing *Industrial Indemnity Co. v. Workers’ Comp. Appeals Board* (1985) 165 Cal.App.3d 633, 638).

³⁷ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

³⁸ *Id.* at page 742.

³⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 866.

⁴⁰ *Id.* at pages 881-882.

⁴¹ *Id.* at page 887, footnote 22.

⁴² *Id.* at page 888.

be needed to comply with the constitutional requirement for safe schools. In fact, the circumstances here are substantially similar to those in the *Kern High School Dist.* case, where the district was denied reimbursement because its participation in the underlying program was voluntary, and no “substantial penalty” would result if local agencies fail to participate in POST or provide their own POST-certified training.

The Supreme Court in *San Diego Unified School Dist.* underscored the fact that a state mandate is found when the state, rather than a local official, has made the decision to require the costs to be incurred.⁴³ In this case, the state has not required the local public agency to participate in POST or provide POST-certified training; the local agency has made that decision. Moreover, the court in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 (*County of Los Angeles II*), in interpreting the holding in *Lucia Mar*,⁴⁴ noted that where local entities have alternatives under the statute other than paying the costs in question, the costs do not constitute a state mandate.⁴⁵ Here, local agencies have alternatives available in that they can: 1) choose not to become members of POST; 2) elect not to present training courses in-house and instead send their law enforcement officers to POST-certified training institutions operated by other entities such as community colleges or other law enforcement agencies; or 3) hire only those individuals who are already POST-certified peace officers. Therefore, the activities do not constitute a state mandate within the meaning of article XIII B, section 6.

Conclusion

Staff finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends the Commission adopt this analysis and deny the test claim.

⁴³ *Id.* at page 880.

⁴⁴ *Lucia Mar, supra*, 44 Cal.3d 830.

⁴⁵ *County of Los Angeles II, supra*, 32 Cal.App. 4th 805, page 818.

ITEM 8
TEST CLAIM
PROPOSED STATEMENT OF DECISION

California Code of Regulations, Title 11,
Sections 1001, 1052, 1053, 1055, 1070, 1071, and 1082
(Register 2001, No. 29)

Training Requirements for Instructors and Academy Staff

02-TC-03

County of Sacramento, Claimant

EXECUTIVE SUMMARY

The sole issue before the Commission on State Mandates ("Commission") is whether the Proposed Statement of Decision accurately reflects the Commission's decision on the *Training Requirements for Instructors and Academy Staff* test claim.¹

Recommendation

Staff recommends that the Commission adopt the Proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission's vote on item 7 modifies the staff analysis, staff recommends that the motion to adopt the proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a proposed Statement of Decision be continued to the March 2007 Commission hearing.

¹ California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM:

California Code of Regulations, Title 11,
Sections 1001, 1052, 1053, 1055, 1070, 1071,
and 1082 (Register 2001, No. 29)

Filed on August 6, 2002, by the County of
Sacramento, Claimant.

Case No.: 02-TC-03
*Training Requirements for Instructors and
Academy Staff*

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

(Proposed for Adoption on January 25, 2007)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on January 25, 2007. [Witness list will be included in the final Statement of Decision.]

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

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final Statement of Decision] to deny this test claim.

Summary of Findings

This test claim addresses regulations adopted by the Commission on Peace Officer Standards and Training ("POST") that require specified training of certain POST instructors and key staff of POST training academies. POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.

Although the test claim regulations do mandate some activities on POST trainers, the Commission finds that those requirements flow from an initial discretionary decision by the local agency to participate in POST, and another discretionary decision to provide POST-certified training or establish an academy and employ training staff. Because the underlying decisions to participate in POST and provide POST-certified training are discretionary, and local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-

mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

BACKGROUND

This test claim addresses POST regulations that require specified training of certain POST instructors and key staff of POST training academies.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.² The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.³ Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.⁴

POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.⁵ POST states the following:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement.⁶

A POST participating agency can offer its own in-house POST-certified training, or send its personnel to POST-certified training institutions operated by other entities, such as community colleges or other law enforcement agencies.⁷

On March 26, 2001, POST issued Bulletin number 01-05 entitled "Proposed Regulatory Action: Training Requirements for Instructors and Academy Staff of Specialized Training Courses." In that bulletin, POST stated:

For years, the training community has shared an informal expectation that persons who instruct in certain high risk/liability areas should attend a POST-certified instructor development course (or an equivalent one) on the related subject area. The same expectation has been maintained for certain key academy staff, and has, in fact, been formalized in the *POST Basic Course Management Guide*. The pertinent POST-certified instructor development courses are listed in the *POST Catalog of Certified*

² Penal Code section 13500 et seq.

³ *About California POST*, <<http://www.POST.ca.gov>>.

⁴ Penal Code sections 13522 and 13523.

⁵ Penal Code sections 13510, 13510.1, 13510.5, and 13511; California Code of Regulations, Title 11, section 1053.

⁶ *Training, Certificates & Services: Overview*, <<http://www.POST.ca.gov>>.

⁷ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

Courses. The proposed regulations also include provisions for equivalency determinations and exemptions from the training requirements.

Test Claim Regulations

POST subsequently adopted the regulations proposed in Bulletin number 01-05, which are the subject of this test claim.⁸ The regulations require that, effective July 1, 2002, primary instructors⁹ of designated specialized training courses complete a specified training standard, or its equivalent, prior to instructing in the specialized subject.¹⁰ Instructors of specialized training that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.¹¹ A process was also established to allow presenters of the specialized courses to perform an equivalency evaluation of non-POST-certified training to meet the minimum training standard for the specialized subject.¹² Presenters of the specialized courses are required to maintain documentation demonstrating satisfaction of the minimum training standard by their instructors who teach any of the specialized courses.¹³

The test claim regulations also require that Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete specified minimum training standards within one year from the date of appointment to the position.¹⁴ Academy Directors are required to maintain documentation demonstrating satisfaction of the minimum training standard for the designated staff position.¹⁵

Three additional requirements are set forth in the test claim regulations with regard to specialized course instructors and Academy instructors. First, qualifications of certain academy staff, in addition to other instructors and coordinators, must now be evaluated by POST in requests for course certification.¹⁶ Second, specified elements of instructor resumes.

⁸ The test claim was filed with the Commission on August 6, 2002, on regulations in effect at that time. The subject regulations have subsequently been modified, however, those modified regulations have not been claimed and, thus, the Commission makes no finding with regard to them.

⁹ "Primary instructor" is an individual responsible for the coordination and instruction for a particular topic. The responsibility includes oversight of topic content, logistics, and other instructors. (Cal. Code Regs., tit. 11, § 1001, subd. (aa))

¹⁰ California Code of Regulations, Title 11, section 1070, subdivision (a).

¹¹ *Ibid.*

¹² California Code of Regulations, Title 11, section 1070, subdivision (b).

¹³ California Code of Regulations, Title 11, section 1070, subdivision (c).

¹⁴ California Code of Regulations, Title 11, section 1071, subdivision (a). Content for the courses for each staff position is specified in section 1082.

¹⁵ California Code of Regulations, Title 11, section 1071, subdivision (b).

¹⁶ California Code of Regulations, Title 11, section 1052, subdivision (a)(2).

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Test Claim Regulations

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¹³ California Code of Regulations, Title 11, section 1070, subdivision (c).

¹⁴ California Code of Regulations, Title 11, section 1071, subdivision (a). Content for the courses for each staff position is specified in section 1082.

¹⁵ California Code of Regulations, Title 11, section 1071, subdivision (b).

¹⁶ California Code of Regulations, Title 11, section 1052, subdivision (a)(2).

must now be provided for course certification requests.¹⁷ And third, certificates of completion must be issued by presenters to students who successfully complete POST-certified instructor development courses listed in section 1070, the Academy Director/Coordinator Workshop and the Recruit Training Officer Workshop.¹⁸

In July 2004, the Commission denied a consolidated test claim, filed by the County of Los Angeles and Santa Monica Community College District, regarding POST Bulletin 98-1 and POST Administrative Manual Procedure D-13, in which POST imposed field training requirements for peace officers that work alone and are assigned to general law enforcement patrol duties (*Mandatory On-The-Job Training For Peace Officers Working Alone*, 00-TC-19/02-TC-06). The Commission found that these executive orders do not impose a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for the following reasons:

- state law does not require school districts and community college districts to employ peace officers and, thus, POST's field training requirements do not impose a state mandate on school districts and community college districts; and
- state law does not require local agencies and school districts to participate in the POST program and, thus, the field training requirements imposed by POST on their members are not mandated by the state.

Claimant's Position

The claimant asserts that the test claim regulations constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.

Claimant asserts that development costs commencing in fiscal year 2001-2002 for the following activities will be incurred and are reimbursable:

1. Staff time to complete or update any necessary general, operations, or special orders as required.
2. Staff time to compile information to be distributed to instructors and key staff informing them of changes in regulations and what information they need to provide such as updated resumes, completed class certificates, etc.
3. Staff time to collect, review for completeness and evaluate contents of current, and any new, instructor and key academy staff information packages turned in.
4. Staff time to review information submitted for equivalency evaluation as instructor or key staff.
5. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
6. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.

¹⁷ California Code of Regulations, Title 11, section 1053, subdivision (a)(2).

¹⁸ California Code of Regulations, Title 11, section 1055, subdivision (d).

7. Staff time to provide required Basic Instructor Development course to new instructors.
8. Purchase of necessary computer hardware, software and any necessary programming services to set up database or modify existing database to track information on #6 above.
9. Staff time to enter information into database to track class, individual, instructor, academy staff, certificate information and any other data required by POST. Database to be used for annual renewals, to provide POST information as necessary and during any audits of the program.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.
12. Develop or update training for data entry, report management and required notices in the database.
13. Meet and confer with POST representatives.
14. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, estimated costs for staff time are \$26,298 and estimated costs for computer hardware, software and programming services are "unknown at this time but could range from \$5,000 - \$20,000."

Claimant asserts that the following ongoing costs will be incurred and are reimbursable:

1. Staff time to collect, review for completeness and evaluate contents of new instructor and key academy staff resumes.
2. Staff time to collect, review for completeness and evaluate contents of annual renewal packages of instructor and key academy staff resumes.
3. Staff time to review information submitted for equivalency evaluation as instructor or key academy staff.
4. Staff time to oversee specific parts of the equivalency process such as the Learner's First CD and the POST video.
5. Staff time to observe and evaluate the instructor presentations as part of the equivalency process.
6. Staff time to provide required Basic Instructor Development course to new instructors.
7. Staff time to compile information to be distributed to instructors and key staff informing them of any changes to these regulations.
8. Staff time to enter information into database to track class, individual, instructor, academy staff and certificate information and any other data required by POST.
9. Staff time to fill out required certificates.
10. Staff time to fill out required documentation for POST.
11. Staff time to schedule required training for instructors and key staff as necessary.

12. Staff time to meet and confer with POST representatives.

13. Costs for printing class material for Basic Instructor Course and necessary office supplies for filing paperwork turned in by instructors and key academy personnel.

For the foregoing activities, claimant estimates ongoing costs of \$25,000 per year.

Position of Department of Finance

The Department of Finance stated in its comments that:

As the result of our review, we have concluded that the [test claim regulations] may have resulted in a higher level of service for an existing program. If the Commission reaches the same conclusion at its hearing on the matter, the nature and extent of the specific activities required can be addressed in the parameters and guidelines which will then have to be developed for the program.

Position of POST

POST stated in its comments that it believes the test claim regulations do not impose a new program or higher level of service within an existing program upon local agencies within the meaning of article XIII B, section 6 of the California Constitution and costs mandated by the state pursuant to Government Code section 17514.

First, under Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST's requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

Second, any law enforcement agency voluntarily participating in the POST program *may* seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. There is no requirement for a participating agency to have POST-certified training courses. Since the test claim regulations affecting instructor/academy staff training requirements only apply to POST-certified training institutions, there is no requirement for the state to reimburse for such costs under the Government Code or the California Constitution.

Third, the new POST training requirements for instructors and academy staff are worded in such a way that they are directed to the individual instructor and academy staff members, not the training institutions. POST-certified training institutions are free to require applicants to complete this training on their own at their own expense. If POST-certified training institutions voluntarily provide their staff with this training, it is no reason to expect the state to reimburse for these costs.

Since POST has facilitated the ready availability of this instructor/academy staff training by certifying the training to virtually any POST-certified training institution that can demonstrate a need and capability, law enforcement trainers in the POST program can conduct much of this required training within their own facilities without sending their personnel away.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution¹⁹ recognizes the state constitutional restrictions on the powers of local government to tax and spend.²⁰ "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."²¹ 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.²² In addition, the required activity or task must be new, constituting a "new program," and it must create a "higher level of service" over the previously required level of service.²³

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.²⁴ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.²⁵ A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."²⁶

¹⁹ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) 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 that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

²⁰ *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

²¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²² *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

²³ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

²⁴ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

²⁵ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

²⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.²⁷

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.²⁸ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."²⁹

The analysis addresses the following issue:

- Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

Issue 1: Are the test claim regulations subject to article XIII B, section 6 of the California Constitution?

In order for the test claim regulations to impose a reimbursable state-mandated program under article XIII B, section 6, the language must order or command a local agency to engage in an activity or task. If the language does not do so, then article XIII B, section 6 is not triggered.

Do the test claim regulations mandate any activities?

The test claim regulations require the following activities:

1. As of July 1, 2002, primary instructors of designated specialized POST training courses must complete a specified training standard, or its equivalent, prior to instructing in the subject.
2. Instructors of designated specialized POST training courses that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.
3. Presenters of specialized courses must maintain documentation demonstrating their instructors who teach any of the specialized courses have satisfied the minimum training standard, and such documentation shall be made available for POST inspection upon request.
4. Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete the specified minimum training standards for their positions within one year from the date of appointment.

²⁷ *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

²⁸ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

²⁹ *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

5. Academy Directors shall maintain documentation demonstrating satisfaction of the minimum training standard for each designated staff position, and such documentation shall be made available for POST inspection upon request.
6. Any person or organization desiring to have a course certified by POST shall now provide instructor resumes in addition to other information previously required.
7. Any presenter of a POST-Certified instructor development course, or any presenter of the Academy Director/Coordinator Workshop or Recruit Training Officer Workshop, shall issue certificates to students who successfully complete the training.

Thus, the plain language of the test claim regulations does require specified persons involved in POST training to engage in certain activities. However, based on the following analysis, the Commission finds that the requirements flow from the *initial discretionary decisions* by the local agency to become a member of POST, and to provide POST-certified training or establish a POST training academy. Therefore, the test claim regulations do not constitute a state-mandated program within the meaning of article XIII B, section 6.

POST was created in 1959 “[f]or the purpose of raising the level of competence of local law enforcement officers ...”³⁰ To accomplish this purpose, POST has the authority, pursuant to Penal Code section 13510, to adopt rules establishing minimum standards relating to the physical, mental, and moral fitness of peace officers, and for the training of peace officers. However, these rules apply only to those cities, counties, and school districts that participate in the POST program and apply for state aid.³¹ If the local agency decides to file an application for state aid, the agency must adopt an ordinance or regulation agreeing to abide by POST rules and regulations.³² Not all local agencies have applied for POST membership,³³ nor do all local agencies provide POST-certified training. Nor is there any state statute, or other state law, that requires local agencies to participate in the POST program or provide POST-certified training. Moreover, consistent with POST’s long standing interpretation of the Penal Code, POST’s regulations state that participation in the POST program is voluntary.³⁴ POST stated the following in its comments on this test claim:

[U]nder Penal Code sections 13503, 13506, and 13510, POST is a voluntary program in which agencies may or may not participate, and any agency choosing not to participate is not subject to POST’s requirements. Only when a law enforcement agency commits to participate by local ordinance is it obliged to adhere to program requirements.

With regard to providing training, section 13511, subdivision (a), states that, “[i]n establishing standards for training, [POST] shall, so far as consistent with the purposes of this chapter, permit required training to be obtained at institutions approved by [POST].” On its website at

³⁰ Penal Code section 13510.

³¹ Penal Code section 13520.

³² Penal Code section 13522.

³³ POST’s website at http://www.post.ca.gov/library/other/agency_page.asp lists law enforcement agencies and participation status.

³⁴ California Code of Regulations, title 11, section 1010, subdivision (c).

<http://www.post.ca.gov/training/default.asp>, POST gives an overview of Training, Certificates & Services it provides which states:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement....

In comments on this test claim, POST also stated that:

[A]ny law enforcement agency voluntarily participating in the POST program may seek to have its training programs certified by POST. A participating agency can elect to not present training courses in-house and instead send its personnel to POST-certified training institutions operated by other entities, e.g., community colleges or other law enforcement agencies. The point here is that there is no requirement for a participating agency to have POST-certified training courses....³⁵

Thus, according to the Penal Code, and as the Penal Code provisions are interpreted by POST, participating in the POST program,³⁶ obtaining POST certification of training courses and providing POST-certified training are discretionary decisions on the part of the training provider. The courts have found it is a well-established principle that "contemporaneous administrative construction of a statute by the agency charged with its enforcement and interpretation, while not necessarily controlling, is of great weight; and courts will not depart from such construction unless it is clearly erroneous or unauthorized."³⁷ The Commission finds no other provision in statute or regulation to contradict POST's interpretation of the Penal Code.

In the *Kern High School Dist.* case, the California Supreme Court held that the requirements imposed by a test claim statute are not state-mandated if the claimant's participation in the underlying program is voluntary.³⁸ The court stated:

[T]he core point ... is that activities undertaken at the option or discretion of a local governmental entity (that is, actions undertaken without any legal compulsion or threat of penalty for nonparticipation) do not trigger a state mandate and hence do not require reimbursement of funds – even if the local entity is obliged to incur costs as a result of its discretionary decision to

³⁵ Letter from Kenneth J. O'Brien, Executive Director of POST, submitted October 31, 2002, page 1.

³⁶ California Code of Regulations, title 11, section 1010, subdivision (c).

³⁷ *State Compensation Insurance Fund v. Workers' Compensation Appeals Board* (1995) 37 Cal.App.4th 675, 683 (citing *Industrial Indemnity Co. v. Workers' Comp. Appeals Board* (1985) 165 Cal.App.3d 633, 638).

³⁸ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731.

participate in a particular program or practice. [Citing *City of Merced v. State of California* (1984) 153 Cal.app.3d 777, 783.]³⁹

The cases have further found that, in the absence of strict legal compulsion, a local agency might be “practically” compelled to take an action thus triggering costs that would be reimbursable. In the case of *San Diego Unified School Dist.*, the test claim statutes required school districts to afford to a student specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.⁴⁰ The Supreme Court held that hearing costs incurred as a result of statutorily required expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.⁴¹ Regarding expulsion recommendations that were discretionary on the part of the district, the court acknowledged the school district’s arguments, stating that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement to provide safe schools.⁴² Ultimately, however, the Supreme Court decided the discretionary expulsion issue on an alternative basis.⁴³

In summary, where no “legal” compulsion is set forth in the plain language of a test claim statute or regulation, the courts have ruled that at times, based on the particular circumstances, “practical” compulsion might be found. Here, as noted above, participation in the underlying POST program and providing POST-certified training is voluntary, i.e., no legal compulsion exists. Nor does the Commission find any support for the notion that “practical” compulsion is applicable in the instant case. The test claim regulations do not address a situation in any way similar to the circumstances in *San Diego Unified School Dist.*, where the expulsion of a student might be needed to comply with the constitutional requirement for safe schools. In fact, the circumstances here are substantially similar to those in the *Kern High School Dist.* case, where the district was denied reimbursement because its participation in the underlying program was voluntary, and no “substantial penalty” would result if local agencies fail to participate in POST or provide their own POST-certified training.

The Supreme Court in *San Diego Unified School Dist.* underscored the fact that a state mandate is found when the state, rather than a local official, has made the decision to require the costs to be incurred.⁴⁴ In this case, the state has not required the local public agency to participate in POST or provide POST-certified training; the local agency has made that decision. Moreover, the court in *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805 (*County of Los Angeles II*), in interpreting the holding in *Lucia Mar*,⁴⁵ noted that where local entities have alternatives under the statute other than paying the

³⁹ *Id.* at page 742.

⁴⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 866.

⁴¹ *Id.* at pages 881-882.

⁴² *Id.* at page 887, footnote 22.

⁴³ *Id.* at page 888.

⁴⁴ *Id.* at page 880.

⁴⁵ *Lucia Mar*, *supra*, 44 Cal.3d 830.

costs in question, the costs do not constitute a state mandate.⁴⁶ Here, local agencies have alternatives available in that they can: 1) choose not to become members of POST; 2) elect not to present training courses in-house and instead send their law enforcement officers to POST-certified training institutions operated by other entities such as community colleges or other law enforcement agencies; or 3) hire only those individuals who are already POST-certified peace officers. Therefore, the activities do not constitute a state mandate within the meaning of article XIII B, section 6.

CONCLUSION

The Commission finds that because the underlying decisions to participate in POST, provide POST-certified training or establish a POST training academy are discretionary, and that local agencies have alternatives to providing POST-certified training or establishing a POST training academy, the test claim regulations do not impose a state-mandated program on local agencies within the meaning of article XIII B, section 6 of the California Constitution.

⁴⁶ *County of Los Angeles II, supra*, 32 Cal.App. 4th 805, page 818.

Commission on State Mandates

Original List Date: 8/6/2002
Last Updated: 7/19/2006
List Print Date: 12/29/2006
Claim Number: 02-TC-03
Issue: Training Requirements for Instructors and Academy Staff

Mailing Information: Final Staff Analysis

Mailing List

TO ALL PARTIES AND INTERESTED PARTIES:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.2.)

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