COMMISSION ON STATE MANDATES
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August 1, 2007

Ms. Michele Lawrence
Superintendent
Berkeley Unified School District
2134 Martin Luther King, Jr. Way
Berkeley, CA 94704-1180

Ms. Joan Polster
Assistant Superintendent
Sacramento City Unified School District
5735 47th Avenue
Sacramento, CA 95824

And Affected State Agencies and Interested Parties (see attached mailing list)

RE: **Adopted Statement of Decision**
Adult Education Enrollment Reporting, 02-TC-37
Statutes 1999, Chapter 50 (SB 160); Statutes 2000, Chapter 52 (AB 1740); Statutes 2001, Chapter 106 (SB 739); Statutes 2002, Chapter 379 (AB 425)
Letters from California Department of Education (Dated July 6, 1999; April 24, 2000; and August 1, 2002)
Berkeley and Sacramento City Unified School Districts, Co-Claimants

Dear Ms. Lawrence and Ms. Polster:

The Commission on State Mandates adopted the enclosed Statement of Decision to deny this test claim on July 26, 2007.

Please contact Nancy Patton at (916) 323-3562 if you have any questions.

Sincerely,

PAULA HIGASHI
Executive Director

Enclosure

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BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM: Statutes 1999, Chapter 50, line items 6110-156-0001 and 6110-156-0890, Statutes 2000, Chapter 52, line items 6110-156-0001 and 6110-156-0890, Statutes 2001, Chapter 106, line items 6110-156-0001 and 6110-156-0890, Statutes 2002, Chapter 379, line items 6110-156-0001 and 6110-156-0890, and Letters from California Department of Education (Dated July 6, 1999; April 24, 2000; and August 1, 2002) Filed on June 26, 2003, By Berkeley Unified School District and Sacramento City Unified School District, Claimants.	**Case No.:** 02-TC-37 *Adult Education Enrollment Reporting* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 *(Adopted on July 26, 2007)*

STATEMENT OF DECISION

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

Paula Higashi

PAULA HIGASHI, Executive Director

August 1, 2007
Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM: Statutes 1999, Chapter 50, line items 6110-156-0001 and 6110-156-0890, Statutes 2000, Chapter 52, line items 6110-156-0001 and 6110-156-0890, Statutes 2001, Chapter 106, line items 6110-156-0001 and 6110-156-0890, Statutes 2002, Chapter 379, line items 6110-156-0001 and 6110-156-0890, and Letters from California Department of Education (Dated July 6, 1999; April 24, 2000; and August 1, 2002) Filed on June 26, 2003, By Berkeley Unified School District and Sacramento City Unified School District, Claimants.	Case No.: 02-TC-37 *Adult Education Enrollment Reporting* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5. ARTICLE 7 *(Adopted on July 26, 2007)*

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on July 26, 2007. David Scribner appeared on behalf of claimant, Berkeley Unified School District. Donna Ferebee and Russell Edwards appeared on behalf of Department of Finance.

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 the staff analysis at the hearing by a vote of 6-0 to deny this test claim.

Summary of Findings

This test claim was filed on June 26, 2003, by Berkeley Unified School District and Sacramento City Unified School District on letters from the California Department of Education (CDE) and statutes that address the data collection and reporting requirements of school districts that provide state and/or federally funded adult education programs. The test claim statutes are line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001, and 2002 that were enacted by Statutes 1999, chapter 50; Statutes 2000, chapter 52; Statutes 2001, chapter 106; and Statutes 2002, chapter 379. Line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001, and 2002, appropriate specified amounts from the General Fund and Federal Trust Fund to be allocated by the CDE to school districts, county offices of education , and other agencies for adult education programs. The appropriated amounts are subject to

various provisions, including the requirements that the CDE develop a data and accountability system, and that school districts receiving funding for adult education collect and report specified data to the CDE.

In addition, the CDE issued three letters dated July 6, 1999; April 24, 2000; and August 1, 2002. The July 6, 1999 CDE letter indicated that the CDE had developed a statewide data and accountability system "Tracking of Programs and Students" (TOPSpro), which was requested in the Budget Act of 1998. The July 6, 1999 CDE letter also provided that "beginning July 1, 1999, all adult schools must fully implement the new TOPSpro data collection system for all students and all ten-program areas funded through state apportionment." The letter further indicates the date and location where collected data must be sent. Additionally, the letter indicates that the TOPSpro forms and software may be obtained from CASAS at no charge.

The April 24, 2000 CDE letter contains language similar to the July 6, 1999 CDE letter, but only suggests the use of the TOPSpro system for the collection and reporting of Adult Education Data. In contrast, the August 1, 2002 CDE letter requires the use of the TOPSpro system for all adult education data collection requirements, not merely for "all students and all ten-program areas funded through state apportionment" as required by the July 6, 1999 CDE letter.

The Commission finds that based on the test claim filing date[1] and the plain language of the CDE letters, claimants are not eligible for reimbursement of costs incurred before July 1, 2001. Thus, Statutes 1999, chapter 50, Statutes 2000, chapter 52 (which enacted the Budget Acts of 1999 and 2000), are not subject to article XIII B, section 6 of the California Constitution because the provisions of the test claim statutes are effective only for the fiscal years of the enacted budget acts. Similarly, the Commission finds that the CDE letters dated July 6, 1999 and April 24, 2000 are not subject to article XIII B, section 6 of the California Constitution, because they were only effective until August 15, 2000.

The Commission also finds that the plain language of line item 6110-156-0890 of Statutes 2001, chapter 106, Statutes 2002, chapter 379 (which enacted the Budget Acts of 2001 and 2002) does not require any activity of school districts, and therefore, does not mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

In addition, the Commission finds under *Department of Finance v. Commission on State Mandates* (*Kern High School Dist.*) (2003) 30 Cal.4th 727, that Statutes 2001, chapter 106, Statutes 2002, chapter 379, and the CDE letter dated August 1, 2002, do not impose state-mandated activities upon claimants as they relate to the general provision of adult education, because adult education is provided on a voluntary basis pursuant to Education Code sections 52501-52503.

However, in specified situations, school districts are required to provide adult English and citizenship classes pursuant to Education Code sections 52540 and 52552. Although the 2001 and 2002 budget acts required school districts that provide adult English and citizenship classes to collect and report adult education data, the Commission finds that these statutes do not impose a new program or higher level of service upon school districts within the meaning of article XIII

[1] See Government Code section 17557, subdivision (e).

B, section 6 of the California Constitution because school districts were already required to collect and report adult education data prior to the enactment of Statutes 2001, chapter 106, and Statutes 2002, chapter 379.

The CDE letter dated August 1, 2002 requires school districts that provide adult English and citizenship classes pursuant to Education Code sections 52540 and 52552 to implement the TOPSpro system. Since CDE did not require implementation of the TOPSpro system prior to this letter, the Commission finds that the CDE letter dated August 1, 2002 mandates a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution from July 1, 2002 to August 15, 2003.

However, the Commission finds that claimants are not entitled to reimbursement of costs related to the implementation of the TOPSpro system for the provision of adult English and citizenship classes pursuant to Education Code sections 52540 and 52552.

During the course of the reimbursement period of July 1, 2001 to August 15, 2003, school districts, that may have been required to establish adult English classes and citizenship classes, have had available state funds not subject to specific use limitations to pay for required adult education program expenses. As in *Kern High School Dist.*, the state in providing program funds to claimants, has already provided funds that may be used to cover the necessary program expenses, and, thus, there is no evidence of increased costs mandated by the state as defined by Government Code section 17514.

The Commission concludes that Statutes 1999, chapter 50, Statutes 2000, chapter 52, Statutes 2001, chapter 106, Statutes 2002, chapter 379, and the letters issued by the California Department of Education, dated July 6, 1999, April 24, 2000 and August 1, 2002 do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

BACKGROUND

This test claim addresses the data collection and reporting requirements of school districts that provide state and/or federally funded adult education programs. The Legislature passed the Budget Act of 1998 by enacting Statutes 1998, chapter 324 (Assem. Bill No. (AB) 1656).[2] As part of the Budget Act of 1998, line items 6110-156-0001 and 6110-156-0890 appropriated specified amounts from the General Fund and Federal Trust Fund, respectively, for local assistance to be allocated by the CDE to school districts, county offices of education, and other agencies for adult education programs.

As one of several provisions to the funds appropriated for adult education programs in the Budget Act of 1998, provision 5(h) of line item 6110-156-0001 required the CDE to develop a data and accountability system to obtain information on education and job training services provided through state-funded adult education programs. The CDE is also required to provide school districts with a list of the required data elements for the data and accountability system. School districts receiving funds provided in the line item are required to collect and submit specified data to the CDE.[3]

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[2] Claimants did not plead Statutes 1998, chapter 324, in this test claim.

[3] Statutes 1998, chapter 324 (AB 1656), line item 6110-156-0001, provisions (i) and (j).

Other sources of data collection and reporting requirements for school districts receiving state and/or federal funds for adult education programs include Performance Based Accountability (PBA)[4] and the Workforce Investment Act of 1998 (WIA).[5] Prior to its repeal in 2006, PBA required school districts receiving state and/or federal funding from various sources for adult education programs to report information to the State Job Training Coordinating Council.[6] This information was used to develop an education and job training report card program that assessed the accomplishments of California's work force preparation system.

The United States Congress enacted the WIA with the purpose of creating "a partnership among the Federal Government, States, and localities to provide, on a voluntary basis, adult education and literacy services."[7] In order to receive a grant under the WIA, a state is required to submit a five-year plan setting forth, among other things, a description of how the CDE will evaluate annually the effectiveness of the adult education and literacy activities based on specified performance measures.[8] California's five-year plan requires school districts that wish to be eligible to receive WIA grant money to meet certain criteria, which includes submitting specified data to the CDE.[9]

In general, adult education programs are provided by school districts and other local education agencies on a voluntary basis.[10] The only exceptions are adult English classes and classes in citizenship. Education Code section 52540 requires a high school district to establish classes in English upon application of 20 or more persons above the age of 18 residing in the high school district that are unable to speak, read, or write in English at an eighth grade level.[11] Similarly,

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[4] Statutes 1995, chapter 771 (SB 645), adding Unemployment Insurance Code section 15037.1; repealed by Statutes 2006, chapter 630, section 7 (SB 293).

[5] 112 Statutes 936, 20 U.S.C. section 9201 et seq.

[6] The State Job Training Coordinating Council membership includes the CDE.

[7] 20 U.S.C. 9201.

[8] 20 U.S.C. 9224.

[9] Cal. Dept. Of Education, Workforce Investment Act, Title II, Adult Education and Family Literacy Act, California State Plan 1999-2004, as revised January 10, 2002, p. 33-34 (CDE link to outside source: <http://www.otan.us/webfarm/stateplan/PDF%27s%202004/Stateplan1999-2004.PDF> [as of May 2, 2007]).

[10] Education Code section 52301 allows the county superintendent of schools of each county, with the consent of the state board, to establish and maintain a regional occupational center, or regional occupational program (ROC/P) in the county to provide education and training in career technical courses. Education Code sections 52501, 52502, and 52503 allow high school districts or unified school districts to establish and maintain adult education classes and/or schools.

[11] Education Code section 52540. Derived from Political Code section 1764, subdivision (c), added by Statutes 1923, chapter 268, p. 577, section 1.

Education Code section 52552 requires a high school district to establish special classes in training for citizenship upon application of 25 or more persons.[12]

The test claim statutes are line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001, and 2002 that were enacted by Statutes 1999, chapter 50; Statutes 2000, chapter 52; Statutes 2001, chapter 106; and Statutes 2002, chapter 379. Like the Budget Act of 1998, line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001, and 2002, appropriate specified amounts from the General Fund and Federal Trust Fund to be allocated by the CDE to school districts, county offices of education, and other agencies for adult education programs.[13] The appropriated amounts are subject to many of the same provisions found in the Budget Act of 1998, including the requirements that the CDE develop a data and accountability system, and that school districts receiving funding for adult education collect and report specified data to the CDE.[14]

On July 6, 1999, the CDE issued a letter to "Adult Education Administrators," indicating that the CDE had developed a statewide data and accountability system "Tracking of Programs and Students" (TOPSpro), as requested in the Budget Act of 1998. Provided by Comprehensive Adult Student Assessment System (CASAS), TOPSpro is a computerized database system that automatically scores CASAS tests; tracks student and program outcomes and progress; generates reports for students, teachers, and program administrators; provides individual, class and agency-wide profiles of skills; collects student demographics; and manages data for state and federal accountability.[15]

The CDE letter further states, "Due to the enormous increase in state and federal demands for data collection and accountability, the [CDE] suggest using one accountability system that can be used for all data collection requirements."[16] The TOPSpro system has the ability to be used for all adult data collection requirements, which consist of: (1) State Budget Act Language, (2) CalWORKs, (3) PBA, and (4) WIA.[17] When discussing the "State Budget Act Language" in the outline of data and accountability requirements the letter provides:

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[12] Education Code section 52552. Derived from Statutes 1921, chapter 488, p. 742, section 4.

[13] Statutes 1999, chapter 50, line items 6110-156-0001 and 6110-156-0890 appropriate $542.4 million and $42.3 million respectively; Statutes 2000, chapter 52, line items 6110-156-0001 and 6110-156-0890 appropriate $573.6 million and $48.3 million respectively; Statutes 2001, chapter 106, line items 6110-156-0001 and 6110-156-0890 appropriate $610.7 million and $74.1 million respectively; and Statutes 2002, chapter 379, line items 6110-156-0001 and 6110-156-0890 appropriate $605 million and $91.8 million respectively.

[14] Statutes 1999, chapter 50, line item 6110-156-0001, provisions 5(g)(h)(i); Statutes 2000, chapter 52, line item 6110-156-0001, provisions 4(g)(h); Statutes 2001, chapter 106, line item 6110-156-0001, provisions 4(g)(h); and Statutes 2002, chapter 379, line item 6110-156-0001, provisions 4(g)(h).

[15] Description provided by the Comprehensive Adult Student Assessment System website at <https://www.casas.org/home/index.cfm?fuseaction=home.showContent&MapID=125>, as of May 2, 2007.

[16] CDE letter, dated July 6, 1999, p. 1.

[17] Claimants did not plead the enacting statutes of CalWORKs, the PBA, or WIA.

> **[B]eginning July 1, 1999, all adult schools** must fully implement the new TOPSpro data collection system for all students and all ten-program areas funded through state apportionment. [Original emphasis.][18]

The letter further indicates the date and location where collected data must be sent. Additionally, the letter indicates that the TOPSpro forms and software may be obtained from CASAS at no charge.

On April 24, 2000 and August 1, 2002, the CDE issued letters similar to the July 6, 1999 letter. Unlike the July 6, 1999 letter, the April 24, 2000 letter only suggests the use of the TOPSpro system, stating:

> The [CDE] suggests using one accountability system that can be used for all data collection requirements. The TOPSpro system, including both software and entry/update record sheets, can be used to collect data for all four of the mandates listed below.[19]

This language is not coupled with language requiring the full implementation of the TOPSpro system, as was done in the July 6, 1999 letter.

The August 1, 2002 letter requires the use of the TOPSpro system for all data collection requirements outlined by the August 1, 2002 letter, providing:

> CDE uses the CASAS TOPSpro software system to meet the reporting requirements for both the state and federally funded programs. All adult schools must fully implement the TOPSpro data collection system for all students in all ten program areas funded through state apportionment. All agencies that receive WIA Title II funds must implement the TOPSpro software system as a condition of funding.[20]

Claimants' Position

Claimants, Berkeley Unified School District and Sacramento City Unified School District, contend that the test claim statutes and letters issued by the CDE constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimants assert the test claim statutes and the letters issued by the CDE mandate the following activities:

- the completion of required forms for each student in each program at the school site level;
- input of the form data collected on each student in each program at the school site level;
- transmission of the aggregate school site data to the District;

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[18] CDE letter, *supra*, p. 2, original emphasis.

[19] CDE letter, dated April 24, 2000, p. 1.

[20] CDE letter, dated August 1, 2002, p. 2.

- comparison of TOPSpro data to school site and District attendance data to ensure data is complete and accurate;
- annual reporting of data to Comprehensive Adult Student Assessment System (CASAS);
- obtaining necessary computer hardware and software to properly implement the TOPSpro system;
- training district staff regarding the test claim activities;
- drafting or modifying policies and procedures to reflect the test claim activities; and
- any additional activities identified as reimbursable during the Parameters and Guidelines phase.

Claimants argue that use of the TOPSpro system to report adult education data to the CDE constitutes a "program" because "[p]ublic education in California is a peculiarly governmental function administered by local agencies as a service to the public."[21] In addition, the test claim statutes and letters only apply "to public schools and as such imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state."[22]

Claimants also assert that use of the TOPSpro system constitutes a "new program" or "higher level of service," stating:

> While data reporting occurred before the enactment of the test claim [statutes] and issuance of the [letters from the CDE], the process, system, method, and timing of reporting has dramatically changed since the mandated introduction of the TOPSpro system.[23]

In addition, claimants contend that the test claim statutes and letters are not subject to any of the "exceptions" listed in Government Code section 17556. Therefore, the test claim statutes and letters impose costs mandated by the state upon adult education schools and school districts.

Department of Finance's Position

The Department of Finance (Finance) filed comments dated June 21, 2004 disagreeing with claimants' test claim allegations. Finance asserts that the test claim statutes and letters do not constitute a reimbursable state mandate because the test claim statutes and letters: (1) do not mandate any activity upon school districts, (2) do not constitute a "new program" or "higher level of service," and (3) do not impose increased costs mandated by the state.

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[21] Test Claim, p. 7. Claimant cites *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 172, as support for this contention. However, the court's statement that education is a peculiarly governmental function was made in regard to Kindergarten through 12th grade education, and not adult education.

[22] *Ibid.*

[23] *Ibid.*

Finance contends that the plain language of the test claim statutes and letters do not mandate any activity upon school districts, stating, "The actual language [of the test claim statutes] does not place any requirements upon the [school districts]. Instead the language places a specific requirement upon the [CDE]."[24] Finance argues that the July 6, 1999, and April 24, 2000 letters only "suggest" the use of TOPSpro. In regard to the August 1, 2002 letter, Finance contends that although the letter requires the use of TOPSpro, the requirement is only a condition of receiving funds and the CDE does not have the statutory authority to enforce the submission of data or the use of TOPSpro. Thus, the language of the test claim statutes and letters do not mandate any activity upon school districts.

Finance also argues that any data collection and reporting requirements contained in the test claim statutes and letters are not mandated upon claimants. Finance states that with two exceptions,[25] "adult education classes are voluntary and are conducted at the discretion of the [school district]. Therefore, any incidental reporting or claiming required are costs incurred at the [school district's] option."[26] In regard to the two exceptions, English classes and citizenship classes, Finance states that those requirements were "not created after 1975 and [are] not subject to reimbursement."[27]

In addition, Finance asserts that the test claim statutes and letters do not impose requirements that constitute a "new program" or "higher level of service." Finance contends:

> As a condition of receipt of funding, districts have historically been required to report on the number of [average daily attendance] served along with other information standards established by the [CDE]. ... Therefore, the use of TOPSpro does not represent a higher level of service, but merely a different and likely much less expensive and more efficient manner in which to meet reporting standards to receive funding.[28]

Finance further contends that the test claim statutes and letters should not impose increased costs mandated by the state. Finance argues:

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[24] Finance comments to the test claim dated June 21, 2004, p. 2.

[25] Education Code section 52540 requires school districts to offer classes for adults for whom English is a second language upon the demand of 20 or more students. Education Code section 52552 requires school districts to offer classes in United States citizenship upon the demand of 25 or more students.

[26] Finance comments to the test claim dated June 21, 2004, p. 3.

[27] *Ibid.*

[28] *Ibid.*

> The Budget Act of 2003 provided $550.8 million in Proposition 98 General Fund and $82.2 million in federal funds for adult education programs. Thus the State provides more than adequate funding to be used to offset any costs associated with adult education reporting.[29]

Finance indicates that the CDE, through CASAS, provides all school districts with a free set of TOPSpro software and all of the forms that the system uses. CASAS has indicated that they have worked with many districts to ensure that their individual school and district attendance systems work with TOPSpro in order to make the system as seamless as possible. CASAS also provides free training on the use of the TOPSpro system. Finance concludes that "the use of TOPSpro does not represent a higher level of service, but merely a different and likely much less expensive and more efficient manner in which to meet reporting standards to receive funding."[30]

Commission Findings

The courts have found that article XIII B, section 6 of the California Constitution[31] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[32] "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."[33] 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.[34] 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.[35]

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[29] *Ibid.*

[30] *Ibid.*

[31] California Constitution, 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."

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

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

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

[35] *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*).

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.[36] 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.[37] A "higher level of service" occurs when there is "an increase in the actual level or quality of governmental services provided."[38]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[39]

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.[40] 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."[41]

Issue 1: Are the test claim statutes and letters issued by the CDE subject to article XIII B, section 6 of the California Constitution?

Government Code section 17500 et seq., implements article XIII B, section 6 of the California Constitution. Government Code section 17557, subdivision (e), establishes the reimbursement period for reimbursable state-mandated programs and provides that "[a] test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that fiscal year."

Here, claimants submitted the test claim on June 26, 2003, during the 2002-2003 fiscal year. As a result, claimants are eligible for possible reimbursement beginning on July 1, 2001, the start of the 2001-2002 fiscal year. Any costs for activities associated with the alleged state-mandated program incurred before July 1, 2001 are not reimbursable.

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[36] *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).

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

[38] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877.

[39] *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.

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

[41] *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.

Claimants have pled line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 1999, 2000, 2001, and 2002, and three letters issued by the California Department of Education (CDE) dated July 6, 1999, April 24, 2000, and August 1, 2002, as test claim statutes and alleged executive orders, respectively. The provisions of test claim statutes were effective only for the fiscal year for which the Budget Acts were enacted. Similarly the CDE letters were effective for limited durations.

The July 6, 1999 and April 24, 2000 CDE letters were both issued during the 1999-2000 fiscal year (July 1, 1999 through June 30, 2000). The July 6, 1999 CDE letter provides, "The following information outlines the data and accountability requirements of all adult schools beginning July 1, 1999."[42] This outline consisted of: (1) the language of the Budget Act of 1999, (2) CalWORKs, (3) PBA, and (4) WIA. Under the heading for the Budget Act language of 1999, which is only effective for July 1, 1999 through June 30, 2000 (the 1999-2000 fiscal year), the letter provides:

> **[B]eginning July 1, 1999, all adult schools** must fully implement the new TOPSpro data collection system for all students and all ten-program areas funded through state apportionment. [Original emphasis.][43]

Under the CalWORKs and PBA headings, the July 6 letter requires the submission of data collected between January 1, 1999 through June 30, 1999, no later than August 15, 1999. Under the WIA heading, the July 6 CDE letter requires submission of data collected during 1999-2000 no later than August 15, 2000. The April 24, 2000 CDE letter provides, "The following information outlines the data and accountability requirements of all adult schools for fiscal year 1999-2000."[44] The letter proceeds to outline the same requirements outlined in the July 6, 1999 CDE letter, however, only suggests the use of the TOPSpro system, providing:

> The [CDE] suggests using one accountability system that can be used for all data collection requirements. The TOPSpro system, including both software and entry/update record sheets, can be used to collect data for all four of the mandates listed below.[45]

The April 24, 2000 CDE letter also provides that adult education data collected for the 1999-2000 fiscal year for the State Budget Act, CalWORKs, PBA, and WIA requirements are due no later than August 15, 2000.

Accordingly, the requirements of the July 6, 1999 CDE letter, which cover the same areas as the April 24, 2000 CDE letter, were effective only until the issuance of the April 24, 2000 CDE letter. Also, as indicated in the April 24, 2000 CDE letter, the requirements of the letter were applicable to the 1999-2000 fiscal year and were effective until August 15, 2000.

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[42] CDE letter, dated July 6, 1999, p. 1.

[43] CDE letter, *supra*, p. 2, original emphasis.

[44] CDE letter, dated April 24, 2000, p. 1.

[45] CDE letter, dated April 24, 2000, p. 1.

Given that claimants are not eligible for reimbursement of costs incurred before July 1, 2001, and that the provisions of the test claim statutes are effective only for the fiscal year that the Budget Acts were enacted, the Budget Acts of 1999 and 2000 are not subject to article XIII B, section 6 of the California Constitution. Similarly, the July 6, 1999 and April 24, 2000 CDE letters are not subject to article XIII B, section 6 of the California Constitution, because they were only effective until August 15, 2000.

The August 1, 2002 CDE letter provides as its subject, "FY 2002-03 Accountability Requirements."[46] The letter subsequently provides that adult education data collected for the 2002-2003 fiscal year is due no later than August 15, 2003. Thus, the requirements in the August 1, 2002 CDE letter were applicable to the 2002-2003 fiscal year and effective until August 15, 2003.

The Commission therefore, finds that the Budget Acts of 2001 and 2002, and the August 1, 2002 CDE letter are subject to article XIII B, section 6 of the California Constitution. However, because the August 1, 2002 CDE letter is effective only until August 15, 2003, and claimants have not pled any subsequent Budget Acts or alleged executive orders, the possible reimbursement period begins July 1, 2001 and ends August 15, 2003.

Issue 2: Do the line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 2001 and 2002, and the CDE letter dated August 1, 2002, mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution?

In order for a test claim statute and/or executive order to impose a reimbursable, state-mandated, program under article XIII B, section 6, the statutory language must mandate an activity or task upon local governmental entities. If the statutory language does not mandate or require the claimant to perform a task, then article XIII B, section 6, does not apply.

Line items 6110-156-0001 and 6110-156-0890 of the Budget Acts of 2001 and 2002 indicate the amounts appropriated from the State General Fund and Federal Trust Fund to be distributed to school districts that provide adult education programs. For example, line item 6110-156-0001 of the Budget Act of 2001, which appropriates $610.7 million General Fund, provides:

> For local assistance, [CDE] (Proposition 98), for transfer to Section A of the State School Fund, for allocation by the Superintendent of Public Instruction to school districts, county offices of education, and other agencies for the purposes of Proposition 98 educational programs funded by this item, in lieu of the amount that otherwise would be appropriated pursuant to statute.[47]

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[46] CDE letter, dated July 6, 1999, p. 1.

[47] Statutes 2001, chapter 106, line item 6110-156-0001.

Line item 6110-156-0001 of the Budget Act of 2001 then "schedules" the amount appropriated into four categories (three adult education program areas and reimbursements). The $610.7 million in General Fund is scheduled amongst the four categories as follows:

(1) 10.50.010.001 - Adult Education.....574,705,000
(2) 10.50.010.008 - Remedial education services for participants in the CalWORKs.....18,293,000
(3) 10.50.010.009 - Local Education Agencies—Education Services for participants in CalWORKs.....26,447,000
(4) Reimbursements - CalWORKs.....-8,739,000

These "scheduled" amounts are then subject to several "provisions" that limit the use of the funds or require certain activities if any appropriated funds are received. For example, line item 6110-156-0001 of the Budget Act of 2001 provides:

> As a condition of receiving funds provided in Schedules (2) and (3) of this item or any other General Fund appropriation made to the [CDE] specifically for education and training services to welfare recipient students and those in transition off of welfare, local adult education programs and regional occupational centers and programs shall collect program and participant data as described in this section and as required by the [CDE]. The [CDE] shall require that local providers submit to the state aggregate data for the period July 1, 2001, through June 30, 2002.[48]

The Budget Act of 2002 contains the same provision with minor technical changes.[49] Thus, as a condition of receiving appropriated funds, line item 6110-156-0001 of the Budget Acts of 2001 and 2002 require school districts to collect and report data to the CDE.

The language of line item 6110-156-0890 of the Budget Acts of 2001 and 2002 appropriates money from the Federal Trust Fund for adult education. However, the language of line item 6110-156-0890 does not require any activity of school districts (claimants). Therefore, line item 6110-156-0890 of the Budget Acts of 2001 and 2002 do not mandate a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution. Hereafter, "test claim statutes" will refer only to line item 6110-156-0001 of the Budget Acts of 2001 and 2002.

In addition to the test claim statutes, on August 1, 2002, the CDE issued a letter that claimants have alleged to be an executive order that imposes a reimbursable state-mandated program. An "executive order" is defined as any order, plan, requirement, rule, or regulation issued by: (1) the Governor; (2) any officer or official serving at the pleasure of the Governor; or (3) any agency, department, board, or commission of state government.[50]

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[48] Statutes 2001, chapter 106, line item 6110-156-0001, provision 4(h).

[49] Statutes 2002, chapter 379, line item 6110-156-0001, provision 4(h).

[50] Government Code section 17516.

The August 1, 2002 CDE letter indicates that the CDE is required to collect and report statewide accountability data for adult education programs as directed by federal and state law which include: (1) the Workforce Investment Act (WIA), (2) the State Budget Act, and (3) the California State Plan 1999-2004. In addition the CDE letter specifically requires the implementation of the TOPSpro system for all data collection requirements outlined in the letter, providing:

> CDE uses the CASAS TOPSpro software system to meet the reporting requirements for both the state and federally funded programs. All adult schools must fully implement the TOPSpro data collection system for all students in all ten program areas funded through state apportionment. All agencies that receive WIA Title II funds must implement the TOPSpro software system as a condition of funding.[51]

The letter further indicates that data reported is for the period of July 1, 2002 through June 30, 2003, and should be submitted to CASAS no later than August 15, 2003.

Thus, the August 1, 2002 CDE letter requires the implementation of the TOPSpro system and the submission of adult education data to CASAS on a specified date, and, therefore, constitutes an executive order within the definition of Government Code section 17516.

Although the test claim statutes require the collection and reporting of adult education data to the CDE and the August 1, 2002 CDE letter requires the implementation of the TOPSpro system and the submission of adult data to CASAS on a specified date, the test claim statutes and the August 1, 2002 CDE letter do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution for general adult education classes established pursuant to Education Code section 52501, 52502, and 52503 for the reasons stated below.

Adult Education Under Education Code Sections 52501-52503

Generally, adult education programs are provided by school districts and other local education agencies on a voluntary basis pursuant to Education Code sections 52501-52503. The only exceptions are adult language classes in English and citizenship pursuant to Education Code sections 52540 and 52552, which are discussed in the next section of this analysis (beginning on page 18).

In *Kern High School Dist.*, the California Supreme Court considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution.[52] Within its discussion, the court addressed whether a mandate could be created by requirements that attached to a school district as a result of that district's participation in an underlying voluntary program. In *Kern High School Dist.*, school districts requested reimbursement for notice and agenda costs for meetings of their school site councils and advisory bodies. These bodies were established as a condition of various education-related programs that were funded by the state and federal government.

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[51] CDE letter, dated August 1, 2002, p. 2.

[52] *Kern High School Dist., supra,* 30 Cal.4th 727.

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."[53] The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders."[54]

The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the Commission must look at the underlying program to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[55] The court stated:

> In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)[56]

Thus, the court held:

> [W]e reject claimant's assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's* [*sic*] *participation in the underlying program is voluntary or compelled.* [Emphasis added.][57]

Based on the plain language of the statutes creating the underlying education programs in *Kern High School Dist.*, the court determined that school districts were not legally compelled to participate in eight of the nine underlying programs.[58]

The school districts in *Kern High School Dist.*, however, urged the court to define "state mandate" broadly to include situations where participation in the program is coerced as a result of severe penalties that would be imposed for noncompliance. The court previously applied such a construction to the definition of a federal mandate in the case of *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 74, where the state's failure to comply with federal legislation that extended mandatory coverage under the state's unemployment insurance law would result in

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[53] *Id.* at p. 737.

[54] *Ibid.*

[55] *Id.* at p. 743.

[56] *Ibid.*

[57] *Id.* at p. 731.

[58] *Id.* at p. 744-745.

California businesses facing "a new serious penalty – full, double unemployment taxation by both state and federal governments." After reflecting on the purpose of article XIII B, section 6, which is to preclude the state from shifting financial responsibilities onto local agencies that have limited tax revenue, the court stated that it "would not foreclose the possibility that a reimbursable state mandate under article XIII B, section 6, properly might be found in some circumstances in which a local entity is not legally compelled to participate in a program that requires it to expend additional funds."[59] However, based on the facts presented in *Kern High School Dist.*, the court declined to find a state mandate, holding:

> Finally, we reject claimants' alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter, they have been compelled to do so and hence to incur notice-and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion – for example, if the state were to impose a substantial penalty (independent of the program funds at issue) upon any local entity that declined to participate in a given program – claimants here faced no such practical compulsion. Instead, although claimants argue that they have had "no true option or choice" other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstances that claimants have found the benefits of various funded programs "too good to refuse" - even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the costs of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate.[60]

Thus, under the facts in *Kern High School Dist.*, the court found that requirements imposed on a claimant due to the claimant's participation in an underlying voluntary program do not constitute a reimbursable state mandate. In addition, the court held open the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion, such as the imposition of "'certain and severe ... penalties' such as 'double ... taxation' and other 'draconian' consequences.'"[61] For the reasons below, *Kern High School Dist.* is applicable here.

Education Code sections 52501, 52502, and 52503, *authorize*, but do not require, high school districts or unified school districts to establish and maintain adult education classes and/or schools. School districts that elect to establish adult education classes are eligible to apply for and receive funding for these classes through various sources (such as CalWORKs and the WIA). As a condition of receiving funding through these sources, state and federal law require the collection and reporting of adult education data. These laws include: (1) The State Budget Acts, and (2) the California State Plan 1999-2004 which is required by the WIA.

The State Budget Acts (test claim statutes) appropriate funds subject to various provisions. These provisions require that funds are used for specific purposes (such as CalWORKs and WIA

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[59] *Kern High School Dist., supra*, 30 Cal.4th 727, 752.

[60] *Id.* at p. 731, emphasis in original.

[61] *Id.* at p. 751, quoting *City of Sacramento, supra*, 50 Cal.3d at p. 74.

programs), and that certain activities occur (including data collection and reporting) if funds are received. Therefore, school districts that offer and provide adult education classes pursuant to Education Code sections 52501-52503 may avoid being subject to the provisions of the test claim statutes and August 1, 2002 CDE letter by electing to forgo receipt of these funds. Similarly, the California State Plan 1999-2000, which is required by the WIA, provides, "Local providers will be eligible to receive funds if they meet [specified] criteria," which includes submitting data to the CDE.[62] As with the test claim statutes, school districts elect to receive WIA funding, subjecting school districts to conditions attached to the funds. As a result, any data collection and reporting requirements, for which the test claim statutes and the executive order require the implementation of the TOPSpro system, are only conditions to receive funding from these various sources and are not mandated unless the school district *elects* to offer adult education and to receive funding from these sources. Thus, school districts are not legally compelled to comply with the requirements because the underlying activity is not required.

In addition, a school district's failure to establish adult education programs pursuant to Education Code sections 52501-52503, comply with data collection and reporting requirements, and implement the TOPSpro system does not result in any certain and severe penalties independent of the program funds at issue. Instead, similar to the claimants in *Kern High School Dist.*, a school district only faces forgoing the benefits of various voluntary adult education programs funded by the state and federal governments, which the court in *Kern High School Dist.* found did not constitute certain and severe penalties. Thus, school districts have not, as a "practical" matter, been compelled to establish adult education programs, or incur costs associated with adult education data collection and reporting and the implementation of the TOPSpro system.

Accordingly, the Commission finds with respect to the requirements to implement the TOPSpro system and to collect and submit adult education data for general adult education under Education Code sections 52501-52503, Statutes 2001, chapter 106, Statutes 2002, chapter 379 (test claim statutes) and the CDE letter dated August 1, 2002 do not impose a state-mandated program on school districts, and thus, are not reimbursable pursuant to article XIII B, section 6 of the California Constitution. Therefore, the remaining discussion involves whether the test claim statutes and the executive order impose a reimbursable state-mandated program as they relate to adult English and citizenship classes.

Adult Language Classes in English and Citizenship Classes Pursuant to Education Code Sections 52540 and 52552

Education Code section 52540 requires a high school district to establish classes in English upon application of 20 or more persons above the age of 18 residing in the high school district that are unable to speak, read, or write in English at an eighth grade level.[63] Education Code section 52552 requires a high school district to establish special classes in training for citizenship upon application of 25 or more persons.[64] As a result, a school district's provision of adult English and citizenship classes is not voluntary. School districts must comply with the test claim statutes

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[62] Cal. Dept. Of Education, Workforce Investment Act, Title II, *supra*, p. 33.

[63] Education Code section 52540. Derived from Political Code section 1764, subdivision (c), added by Statutes 1923, chapter 268, p. 577, section 1.

[64] Education Code section 52552. Derived from Statutes 1921, chapter 488, p. 742, section 4.

and the August 1, 2002 CDE letter, which require the collection and reporting of adult education data and the implementation of the TOPSpro system, to receive funding for these requested classes. Therefore, the Commission finds that Statutes 2001, chapter 106, Statutes 2002, chapter 379 (test claim statutes) and the CDE letter dated August 1, 2002 constitute a state-mandated program for school districts providing English and citizenship classes pursuant to Education Code sections 52540 and 52552.

The courts have held that legislation constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution when the requirements are new in comparison with the pre-existing scheme and the requirements were intended to provide an enhanced service to the public.[65] To make this determination, the test claim statutes and the August 1, 2002 CDE letter's requirements must initially be compared with the legal requirements in effect immediately prior to its enactment.[66]

Prior to the enactment of line item 6110-156-0001 of the Budget Acts of 2001 and 2002, line item 6110-156-0001 of the Budget Acts of 1998, 1999, and 2000 already required the collection and reporting of adult education data to the CDE.[67] Thus, the collection and reporting of adult education data to the CDE is not a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

After the CDE issued the August 1, 2002 letter, all adult schools that received funding through state apportionment and /or WIA were required to fully implement the TOPSpro system. Immediately prior to the August 1, 2002 CDE letter, the CDE only suggested implementing the TOPSpro system, which could be used for all data collection requirements.[68] Thus, the Commission finds that the implementation of the TOPSpro system constitutes a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution.

However, even if the implementation of the TOPSpro system is considered a mandated new program or higher level of service imposed upon school districts that are required to provide adult English classes and/or citizenship classes, the August 1, 2002 CDE letter must also impose costs mandated by the state in order to constitute a reimbursable state-mandated program as defined by article XIII B, section 6 of the California Constitution.

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

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

[67] Statutes 1998, chapter 324 (AB 1656), line item 6110-156-0001, provisions (i) and (j); Statutes 1999, chapter 50, line item 6110-156-0001, provisions (h) and (i); Statutes 2000, chapter 52, line item 6110-156-0001, provision (h).

[68] CDE letter, dated April 24, 2000, p. 1.

Issue 3: Does the CDE letter dated August 1, 2002, impose "costs mandated by the state" on school districts within the meaning of the article XIII B, section 6 of the California Constitution and Government Code section 17514?

In order for an executive order to impose a reimbursable state-mandated program under the California Constitution, the executive order must impose costs mandated by the state.[69] Government Code section 17514 defines costs mandated by the state as:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIIIB of the California Constitution.

When discussing costs resulting from funded underlying programs that may have been mandated on claimants, the court in *Kern High School Dist.* held:

> [A]ssuming (without deciding) that claimants have been legally compelled to participate in *one* of nine [underlying] programs, we conclude that claimants nonetheless have no entitlement to reimbursement from the state for such expenses, because they have been free at all relevant times to use funds provided by the state for that program to pay required program expenses- including the notice and agenda costs here at issue.[70]

Finance indicates that the Budget Act of 2003 provided "$550.8 million in Proposition 98 General Fund and $82.2 million in federal funds for adult education programs."[71] Like the Budget Act of 2003, and as noted above, the test claim statutes appropriated General Fund and federal funds for adult education programs. The test claim statutes funded adult education programs as follows:

	Budget Act of 2001	Budget Act of 2002
General Fund (GF)	$610.7	$605
Federal Trust Fund (FTF)	$74.1	$91.8

(Amounts in millions)

These General Fund appropriations are scheduled into separate categories (adult education program areas and reimbursements). These categories are subject to various provisions, some of which limit the use of a portion of the funds for specified purposes. Similarly, the Federal Trust Fund appropriations are subject to various provisions limiting the use of the funds appropriated.

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[69] *Lucia Mar*, *supra*, 44 Cal.3d 830, 835; Government Code section 17514.

[70] *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 731, original emphasis.

[71] Finance comments to the test claim dated June 21, 2004, p. 3.

The $610.7 million General Fund and the $74.1 million Federal Trust Fund appropriated by the Budget Act of 2001 are scheduled between CalWORKs reimbursements (Reimbursements) and three program areas which include: (1) 10.50.010.001 – Adult Education (Adult Education), (2) 10.50.010.008 – Remedial education services for participants in the CalWORKs (CalWORKs remedial education), (3) 10.50.010.009 – Local Education Agencies—Education Services for participants in CalWORKs (LEA CalWORKs). The amounts appropriated for each program and the amounts limited for specific purposes are as follows:

Program Areas	GF Scheduled Amounts	GF Use Limited Amounts	GF Not Use Limited	FTF Scheduled Amounts	FTF Use Limited Amounts	FTF Not Use Limited
Adult Education	$574.7	--	--	$74.1	$12.6[72]	--
CalWORKs remedial education	$18.3	$18.3[73]	--	--	--	--
LEA CalWORKs	$26.4	$26.4[74]	--	--	--	--
Reimbursements	-$8.7	--	--	--	--	--
	--	Misc.-- $37.1[75]	--	--	--	--
Total:	$610.7	$81.8	**$528.9**	$74.1	$12.6	**$61.5**

(Amounts in millions)

Subtracting the total General Fund Scheduled Amount from the total GF Use Limited Amount, and subtracting likewise for the Federal Trust Fund amounts, results in at least $528.9 million General Fund[76] and $61.5 million Federal Trust Fund that is not subject to use limitations beyond the general limitation that funds be used for adult education programs for the 2001-2002 fiscal year.

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[72] Statutes 2001, chapter 106, line item 6110-156-0890, provision 1.

[73] Statutes 2001, chapter 106, line item 6110-156-0001, provisions 4 and 4(i). The federal government, pursuant to the Personal Responsibility Act of 1996 (P.L. 104-193), provides grants to the state for Temporary Assistance for Needy Families (TANF). CalWORKs is California's TANF program.

[74] *Ibid.*

[75] *Id.*, provision 5. Reserving from the total $610.7 General Fund appropriated, $14.3 million for increases in average daily attendance and $22.8 million for cost-of-living adjustments.

[76] TANF allows for a portion of TANF funds to be used for administrative costs. (45 CFR § 263.2(a)(5)(i).)

The $605 million General Fund and the $91.8 million Federal Trust Fund appropriated by the Budget Act of 2002 are scheduled for each program and the amounts limited for a specific purpose are as follows:

Program Areas	GF Scheduled Amounts	GF Use Limited Amounts	GF Not Use Limited	FTF Scheduled Amounts	FTF Use Limited Amounts	FTF Not Use Limited
Adult Education	$582	--	--	$91.8	$5[77]	--
CalWORKs remedial education	$31.7	$31.7[78]	--	--	--	--
Reimbursements	-$8.7	--	--	--	--	--
	--	Misc.-- $27.3[79]	--	--		--
Total:	$605	$59	**$546**	$91.8	$5	**$86.8**

(Amounts in millions)

Subtracting the total General Fund Scheduled Amount from the total GF Use Limited Amount, and subtracting likewise for the Federal Trust Fund amounts, results in at least $546 million General Fund and $86.8 million Federal Trust Fund that is not subject to use limitations beyond the general limitation that funds be used for adult education programs for the 2002-2003 fiscal year.

Claimants have stated in the test claim that, "It is estimated that the claimant will/has incurred significantly more than $1000.00 to implement these new state mandated activities… ."[80] However, there is no evidence in the record that indicates why the funds that were not subject to use limitations ($528.9 million GF and $61.5 million FTF for the 2001-2002 fiscal year and $546 million GF and $86.8 million FTF for the 2002-2003 fiscal year) were not sufficient to cover costs associated with the implementation of the TOPSpro system as it relates to adult English classes and citizenship classes.

Thus, during the course of the reimbursement period of July 1, 2001 to August 15, 2003, school districts, that may have been required to establish adult English classes and citizenship classes, have had available state funds not subject to specific use limitations to pay for required adult

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[77] Statutes 2002, chapter 379, line item 6110-156-0890, provision 6, which reserves $5 million for the Naturalization Services Program, but does not expressly prohibit the use of these funds for data collection and implementation of the TOPSpro system as it relates to the Naturalization Services Program.

[78] Statutes 2002, chapter 379, line item 6110-156-0001, provision 4.

[79] *Id.*, provision 5. Reserving from the total $605 General Fund appropriated, $15 million for increases in average daily attendance and $12.3 million for cost-of-living adjustments.

[80] Test Claim, declarations Margaret Kirkpatrick, p.2; and Joan Polster, p.2.

education program expenses. As a result, under *Kern High School Dist.*, school districts are not entitled to reimbursement from the state for costs associated with the implementation of the TOPSpro system as it relates to adult English classes and citizenship classes because there is no evidence in the record of increased costs mandated by the state as defined by Government Code section 17514.

It should be noted that the court in *Kern High School District* states that a "compulsory program participant likely would be able to establish the existence of a reimbursable state mandate"[81] in situations where:

> [I]ncreased compliance costs imposed by the state ... become so great-or funded program grants ... become so diminished that funded program benefits would not cover the compliance costs, or ... expenditure of granted program funds on administrative costs ... violate a spending limitation set out in applicable regulations or statutes.[82]

However, there is no evidence in the record that the increased costs resulting from the implementation of the TOPSpro system are so great, or program grants have become so diminished that funded program benefits would not cover the costs of implementing the TOPSpro system. In fact, provisions 6 and 7 of line item 6110-156-0001 of the Budget Act of 2001 provide for the use of unencumbered funds from the prior fiscal year. Similarly, provision 5 of line item 6110-156-0890 of the Budget Act of 2002 states that $18 million of the $91.8 million appropriated in the item is available as a one-time carryover of unexpended funds from the 2001-2002 fiscal year. In addition, the August 1, 2002 CDE letter indicates that the TOPSpro forms and software may be obtained from CASAS at no charge to school districts.[83]

Thus, the Commission finds that claimants are not entitled to reimbursement of costs related to the CDE letter dated August 1, 2002, for the provision of adult English and citizenship classes. As in *Kern High School Dist.*, the state in providing program funds to claimants, has already provided funds that may be used to cover the necessary program expenses, and, thus, there is no evidence of increased costs mandated by the state as defined by Government Code section 17514.

CONCLUSION

Therefore, the Commission concludes that, Statutes 1999, chapter 50, Statutes 2000, chapter 52, Statutes 2001, chapter 106, Statutes 2002, chapter 379, and the CDE letters dated July 6, 1999, April 24, 2000 and August 1, 2002, do not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution.

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[81] *Kern High School Dist., supra*, 30 Cal.4th 727, 747-748.

[82] *Id.* at p. 747.

[83] CDE letter, dated August 1, 2002, p. 3.

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Issue: Adult Education Enrollment Reporting

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