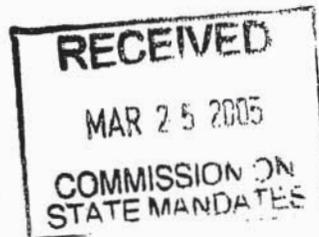




March 24, 2005

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814



Dear Ms. Higashi:

As requested in your letter dated January 11, 2005 and modified on February 23, 2005, the Office of Public School Construction (OPSC) has reviewed the test claim submitted by the Los Angeles Unified School District asking the Commission to determine whether specified costs are incurred by the school district as required by statute in furnishing clean school restrooms (Claim Number 04-TC-01). Following please find responses to the questions addressed in your letter:

- 1. Do the provisions listed in the notice impose a new program or higher level of service within an existing program upon local entities within the meaning of Section 6, Article XIII B of the California Constitution and costs mandated by the State pursuant to Section 17514 of the Government Code?**

Participation in the Clean School Restrooms, Senate Bill (SB) 892 does not impose a higher level of service upon local entities. Education Code (EC) Section 17576 requires districts to furnish "sufficient patent flush water closets for the use of pupils."

The test claim states, "the language makes no requirement regarding the maintenance and operation of restrooms..." The enactment of SB 892 sought to clarify the **preexisting** requirements as stated in EC Section 17576 in a manner consistent with those requirements that apply to other public and private persons or agencies pursuant to the California Health and Safety Code (HSC) Section 118505. It is reasonable to believe that a sufficient water closet indicates it is open, clean, and operational and supplied with water, soap, toilet paper and a method for hand drying.

The claim further asserts that the HSC Section 118505 excludes public or private K-12 school facilities from the maintenance and operations of public restrooms requirements. EC Section 17576 already requires school districts to provide sufficient restrooms. Therefore, it is unnecessary to include public or private K-12 school facilities in HSC 118505 because it would be duplicative of the already existing EC 17576.

Participation in the Deferred Maintenance Program (DMP), established through EC Sections 17582 through 17588 and 17591 through 17592.5, is voluntary on the part of school districts. EC Section 17582 states that "...a district *may* establish an account to be known as the "district deferred maintenance account..." No requirement is made in statute that a district is required to establish this account and therefore participate in the program. Districts may choose to maintain facilities through the use of district raised funds. The DMP elements described in Part Three, Section Three of the test claim are only required if a district chooses to participate in the DMP. Therefore, it is our opinion that the declaration on page 12 of the test claim that Chapter 358 does not provide new revenues but in fact reduces funds is unfounded, as it only applies to districts choosing to participate in the DMP.

2. Does Government Code Section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the State?

Yes. It appears that Government Code Section 17556(d) precludes the Commission from finding that any provisions of the test claim impose costs mandated by the State.

Government Code Section 17556(d):

The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increase level of service.

Statute allows a school district the authority to raise program costs through the passage of local bonds, other revenue sources including developer fees for capital outlay needs.

3. Have funds been appropriated for this program (e.g. State budget) or are there any other sources of funding available? If so, what is the source?

For districts who participate in the DMP, the DMP receives its funding annually. Funding is made available primarily from three sources:

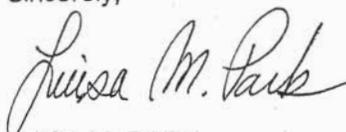
- Excess repayments from the State School Building Aid Program (SSBAP)
- State School Site Utilization Fund
- Funds provided through the Budget Act, when applicable

In recent years, program funding has mainly relied on the funds provided through the Budget Act. This is due to the decrease of funding in the SSBAP and site utilization funds as repayments into these programs dwindle. The nature of the DMP is to fund applications in arrears. The 2004/2005 fiscal year dollars are currently being finalized through the proposed 2005/2006 Budget Act. Eligible projects may consist of major repair or replacement of plumbing, heating, air-conditioning, electrical, roofing and floor systems as well as other purposes listed in Education Code Section 17582. Following is a breakdown of the funding for the program from the last fiscal year:

DMP Funds Available 2003/2004 Fiscal Year	
Excess Repayments (SSBAP)	\$13,535,469
Estimated Site Utilization	\$1,998,561
Senate Bill 550	\$12,604,000
2004/2005 Budget Act	\$237,657,000
Carryover from Previous Year	\$1,429,169
TOTAL	\$267,224,199

If you have any questions regarding this letter, please contact Ms. Heather Doherty, Policy and Specials Team Analyst, at heather.doherty@dgs.ca.gov or (916) 323-7794.

Sincerely,



LUISA M. PARK
Executive Officer
Office of Public School Construction

LMP:HD:rm

Enclosure

cc: Commission's Parties and Interested Parties List as of 2/14/2005 (Enclosure)

PROOF OF SERVICE

Test Claim Name: Clean School Restrooms
Test Claim Number: 04-TC-01

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California; I am 18 years of age or older and not a party to the within entitled cause. My business address is 1130 K Street, Suite 400, Sacramento, CA 95814.

On March 24, 2005, I served the attached recommendation of the Office of Public School Construction in said cause, by facsimile to the Commission State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 1130 K Street, Suite 400, for Interagency Mail Service, addressed as follows:

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5252 Balboa Avenue, Suite 807
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Ms. Lori L. Morgan
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Office of Public School Construction
State Allocation Board
1130 K Street, Suite 400
Sacramento, CA 95814-2928

Mr. David Cichella
California School Management Group
1111 E Street
Tracy, CA 95376

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 24, 2005 at Sacramento, California.


Renee Mellies