

ITEM 3
TEST CLAIM
FINAL STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Education Code Sections 37254, 52378, 52379, 52380
Statutes 2007, Chapter 526 and Statutes 2007, Chapter 730
California Code of Regulations, Title 5, Section 1204.5

Register 2004, No. 21, eff. May 19, 2004; Register 2005, No. 33, eff. Aug. 16, 2005; Register
2006, No. 11, eff. Mar. 16, 2006; and Register 2007, No. 51, eff. Dec. 20, 2007

High School Exit Examination II

08-TC-02

San Jose Unified School District, Claimant

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Commission on State Mandates, Statement of Decision, *High School Exit Examination*,
00-TC-06, March 25, 2004.

CDE, Initial Statement of Reasons, California High School Exit Exam Regulations,
February 20, 2007, page 1.

CDE, “Frequent Questions – Supplemental Instruction” last reviewed April 18, 2013.
<<http://www.cde.ca.gov/re/lr/pr/faqsi.asp>> as of May 1, 2013.

CDE, "Guidance: Application for Categorical Funding" last reviewed July 16, 2012.
<<http://www.cde.ca.gov/fg/aa/co/ca12sguiappcatprog.asp> > as of May 1, 2013.

CDE, "Frequently Asked Questions" last reviewed February 7, 2013.
<<http://www.cde.ca.gov/ls/cg/mc/mhscfaq.asp>> as of May 1, 2013.

Assembly Floor, Analysis of SB 4 (3d Ex. Sess.) as amended February 14, 2009, page 1.

Senate Rules Committee, Third Reading Analysis of AB 347 (2007-2008 Reg. Sess.) as amended
September 6, 2007, page 5.

Senate Committee on Education, Analysis of SB 132 (2007-2008 Reg. Sess.) as amended
March 26, 2007, page 5.

5 U.S.C. section 6103

39 CFR section 111.1.

U.S. Postal Service, "Mailing Standards of the United States Postal Service Domestic Mail
Manual" section 608.3.2.

**COMMISSION ON STATE MANDATES
TEST CLAIM FORM**

Authorized by Government Code section 17553
(Revised 1/2005)

RECEIVED
OCT 14 2008
COMMISSION ON
STATE MANDATES

GENERAL INSTRUCTIONS

- Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.
- Type all responses.
- Complete sections 1 through 8, as indicated. Failure to complete any of these sections will result in this test claim being returned as incomplete.
- Original test claim submissions shall be unbound, single-sided, and without tabs. Copies may be double-sided, but unbound and without tabs.
- Mail, or hand-deliver, one original and seven copies of your test claim submission to:

**Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814**

Within ten (10) days of receipt of a test claim, or its amendment, Commission staff will notify the claimant or claimant representative whether the submission is complete or incomplete. Test claims will be considered incomplete if any of the required sections are not included or are illegible. If a completed test claim is not received within thirty (30) calendar days from the date the incomplete test claim was returned, the executive director may disallow the original test claim filing date. A new test claim may be accepted on the same statute or executive order alleged to impose a mandate.

You may download this form from our website! If you have any questions, please contact us:

Web Site:	www.csm.ca.gov
Telephone:	(916) 323-3562
Fax:	(916) 445-0278
E-Mail:	csminfo@csm.ca.gov

1. TEST CLAIM TITLE

AB 347 Chapter 526, SB 132 Chapter 730

High School Exit Exam II

2. CLAIMANT INFORMATION

San Jose Unified School District

Name of Local Agency or School District

Patrick Day

Claimant Contact

Director of Maint./Operations/Purchasing

Title

855 Lenzen Avenue

Street Address

San Jose, CA 95126

City, State, Zip

(408) 535-6572

Telephone Number

(408) 535-2312

Fax Number

Patrick.Day@sjuds.org

E-Mail Address

3. CLAIMANT REPRESENTATIVE INFORMATION

Claimant designates the following person to act as its sole representative in this test claim. All correspondence and communications regarding this claim shall be forwarded to this representative. Any change in representation must be authorized by the claimant in writing, and sent to the Commission on State Mandates.

Patrick Day

Claimant Representative Name

Director of Maintenance/Operations/Purchasing

Title

San Jose Unified School District

Organization

855 Lenzen Avenue

Street Address

San Jose, CA 95126

City, State, Zip

(408) 535-6572

Telephone Number

(408) 535-2312

Fax Number

Patrick.Da_@sjuds.org

E-Mail Address

<i>For CSM Use Only</i>
Filing Date:
OCT 14 2008
COMMISSION ON STATE MANDATES
Test Claim #: 08TC-02

4. TEST CLAIM STATUTES OR EXECUTIVE ORDERS CITED

Please identify all code sections, statutes, bill numbers, regulations, and/or executive orders that impose the alleged mandate (e.g., Penal Code Section 2045, Statutes 2004, Chapter 54 [AB 290]). When alleging regulations or executive orders, please include the effective date of each one.

Education Code Sections 37254, 52378, 52379, 52380

AB 387 Chapter 526 Statutes of 2007

SB 132 Chapter 730 Statutes of 2007

California Code of Regulations

Title 5 1204.5

Copies of all statutes and executive orders cited are attached.

Sections 5, 6, 7 are attached as follows:

5. **Written Narrative:** pages 1 to 17

6. **Declarations:** Exhibit A

7. **Documentation:** Exhibit B

8. **Claim Certification** page 17

Sections 5, 6, and 7 should be answered on separate sheets of plain 8-1/2 x 11 paper. Each sheet should include the test claim name, the claimant, the section number, and heading at the top of each page.

5. WRITTEN NARRATIVE

Under the heading "5. Written Narrative," please identify the specific sections of statutes or executive orders alleged to contain a mandate.

Include a statement that actual and/or estimated costs resulting from the alleged mandate exceeds one thousand dollars (\$1,000), and include all of the following elements for each statute or executive order alleged:

- (A) A detailed description of the new activities and costs that arise from the mandate.
- (B) A detailed description of existing activities and costs that are modified by the mandate.
- (C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.
- (D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.
- (F) Identification of all of the following funding sources available for this program:
 - (i) Dedicated state funds
 - (ii) Dedicated federal funds
 - (iii) Other nonlocal agency funds
 - (iv) The local agency's general purpose funds
 - (v) Fee authority to offset costs
- (G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

6. DECLARATIONS

Under the heading "6. Declarations," support the written narrative with declarations that:

- (A) declare actual or estimated increased costs that will be incurred by the claimant to implement the alleged mandate;
- (B) identify all local, state, or federal funds, and fee authority that may be used to offset the increased costs that will be incurred by the claimant to implement the alleged mandate, including direct and indirect costs;
- (C) describe new activities performed to implement specified provisions of the new statute or executive order alleged to impose a reimbursable state-mandated program (specific references shall be made to chapters, articles, sections, or page numbers alleged to impose a reimbursable state-mandated program); and
- (D) are signed under penalty of perjury, based on the declarant's personal knowledge, information or belief, by persons who are authorized and competent to do so.

7. DOCUMENTATION

Under the heading "7. Documentation," support the written narrative with copies of all of the following:

- (A) the test claim statute that includes the bill number alleged to impose or impact a mandate; and/or
- (B) the executive order, identified by its effective date, alleged to impose or impact a mandate; and
- (C) relevant portions of state constitutional provisions, federal statutes, and executive orders that may impact the alleged mandate; and
- (D) administrative decisions and court decisions cited in the narrative. Published court decisions arising from a state mandate determination by the Board of Control or the Commission are exempt from this requirement.

CLAIM CERTIFICATION

*Read, sign, and date this section and insert at the end of the test claim submission. **

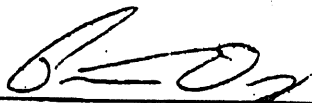
This test claim alleges the existence of a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the State of California, that the information in this test claim submission is true and complete to the best of my own knowledge or information or belief.

Patrick Day

Print or Type Name of Authorized Local Agency
or School District Official

Director, Maintenance/Operations/Purchasing/Contract Mgmt.

Print or Type Title



Signature of Authorized Local Agency or School
District Official

October 7, 2008

Date

** If the declarant for this Claim Certification is different from the Claimant contact identified in section 2 of the test claim form, please provide the declarant's address, telephone number, fax number, and e-mail address below.*

5. WRITTEN NARRATIVE

Education Code Sections 37254, 52378, 52379, and 52380

(A) A detailed description of the new activities and costs that arise from the mandate.

Existing law requires each pupil completing grade 12 to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school.

Existing law provides specified funding for eligible pupils, as defined, who are required to pass the high school exit examination, to be used for intensive instruction and services for those pupils, and provides for the allocation of those funds, based on a per pupil rate calculation, to schools. As a condition of receiving funding, a school district is required to accomplish certain matters, including, among other things, ensure that each eligible pupil receives an appropriate diagnostic assessment to identify that pupil's areas of need and submit an annual report to the Superintendent of Public Instruction relating to the provision of intensive instruction and services to pupils.

This bill, among other things, would revise the definition of "eligible pupil" to include pupils who have not satisfied the requirement that they pass the high school exit examination in order to graduate from high school and have failed one or both parts of the examination by the end of grade 12; revise the calculation for determining the per pupil rate for purposes of funding; authorize the receipt of intensive instruction and services on Saturdays, evenings, or at a time and location deemed appropriate by the school district for eligible pupils; expand the authorized scope of intensive instruction

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and services to include instruction in English language arts or mathematics, or both, that eligible pupils need to pass those parts of the high school exit examination not yet passed and the provision of instruction and services by a public or nonpublic entity as determined by the local educational agency; require a school district to accomplish additional matters relating to pupils who have not passed one or both parts of the exit examination by the end of grade 12; and require the annual report to also include information relating to the notification of eligible pupils of the intensive instruction and services provided and be submitted to the appropriate county superintendent of schools.

Existing law establishes the Middle and High School Supplemental Counseling Program and requires the governing board of a school district that maintains any of grades 7 to 12, inclusive, as a condition of receiving funds appropriated for purposes of that program, to adopt a counseling program at a public meeting that includes, among other things, a provision for a counselor to meet with each pupil, as specified, to explain the academic and department records of the pupil, his or her educational options, the coursework and academic progress needed for satisfactory completion of middle or high school, passage of the high school exit examination, and the availability of career technical education. In addition to these counseling services, a school district is required to identify certain pupils, such as those at risk of not graduating with the rest of their class, and to require its schools to provide certain assistance in developing a list of coursework and experience. As a further condition of receipt of funds, a school district is required to submit an annual report in a manner determined by the Superintendent that describes certain matters, including the number and percentage of pupils who participated in conferences and who fail to pass one or both sections of the high school exit

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examination.

This bill also would require the counselor to explain the availability, for up to 2 consecutive academic years after the completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, of intensive instruction and services for those pupils who have not passed one or both parts of the exit examination by the end of grade 12. The bill also would require a school district, for the identified pupils, to inform a pupil who has not passed one or both parts of the high school exit examination of the option of intensive instruction and services. The bill would require the report also to be submitted to the appropriate county superintendent of schools and contain an assurance that the school district has complied with the provision that requires a school counselor to apprise a pupil of certain information during an individual conference.

(6) This bill also would incorporate additional changes in Section 52378 of the Education Code, proposed by SB 405, to be operative if SB 405 and this bill are both enacted and become effective on or before January 1, 2008, and this bill is enacted last.

ACTIVITIES AND COSTS

SEC. 3. Section 37254 of the Education Code is amended to read:

37254. (a) For purposes of this section, "eligible pupil" means a pupil who has not met the California High School Exit Examination requirement for high school graduation pursuant to Chapter 8 (commencing with Section 60850) of Part 33, and who has failed one or both parts of that examination by the end of grade 12.

(b) (1) From the funds appropriated for purposes of this section in the annual Budget

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Act or other statute, the Superintendent shall determine a per pupil rate of funding by dividing the total amount of funds appropriated for purposes of this section by the number of eligible pupils in grade 12 as reported by school districts in accordance with paragraph (7) of subdivision (d). The Superintendent shall then apportion to each school district an amount equal to the per pupil rate determined pursuant to this paragraph multiplied by the number of eligible grade 12 pupils reported pursuant to paragraph (7) of subdivision (d).

(2) If funds appropriated for purposes of paragraph (1) are not exhausted after the apportionment pursuant to paragraph (1) is made, the Superintendent shall determine a per pupil rate of funding for eligible pupils in grade 11 by dividing the total amount of funds appropriated for purposes of this section remaining after the apportionment pursuant to paragraph (1) has been made by dividing the total number of eligible pupils in grade 11 reported by school districts in accordance with paragraph (7) of subdivision (d). The Superintendent shall apportion to each school district an amount equal to the per pupil rate determined pursuant to this paragraph multiplied by the number of eligible grade 11 pupils reported pursuant to paragraph (7) of subdivision (d).

(3) The maximum per pupil rate of funding shall not exceed five hundred dollars (\$500) and shall be increased annually by the percentage determined in paragraph (2) of subdivision (b) of Section 42238.1

(c) (1) The funds described in subdivision (b) shall be used to provide intensive instruction and services designed to help eligible pupils pass the California High School

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Exit Examination.

(2) Intensive instruction and services may be provided during the regular schoolday provided that they do not supplant the instruction of the pupil in the core curriculum areas as defined in paragraph (5) of subdivision (a) of Section 60603, or physical education instruction. Eligible pupils may receive intensive instruction and services on Saturdays, evenings, or at a time and location deemed appropriate by the school district in order to meet the needs of these pupils.

(3) Intensive instruction and services may include, but are not limited to, all of the following:

(A) Individual or small group instruction.

(B) The hiring of additional teachers.

(C) Purchasing, scoring, and reviewing diagnostic assessments.

(D) Counseling.

(E) Designing instruction to meet specific needs of eligible pupils.

(F) Appropriate teacher training to meet the needs of eligible pupils.

(G) Instruction in English language arts or mathematics, or both, that eligible pupils need to pass those parts of the high school exit examination not yet passed. A school district may employ different intensive instruction and services strategies more aligned to the needs and circumstances of pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 as compared to grade 12 pupils with similar needs in a comprehensive high school of the district.

(H) The provision of instruction and services by a public or nonpublic entity, as

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determined by the local educational agency.

(d) As a condition of receiving funds pursuant to subdivision (c), the school district shall accomplish all of the following:

(1) Ensure that each eligible pupil receives an appropriate diagnostic assessment to identify that pupil's areas of need.

(2) Ensure that each pupil receives intensive instruction and services based on the results of the diagnostic assessment, and prior results on the high school exit examination.

(3) Ensure that all pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 are notified in writing at the last known address before the end of each school term of the availability of the services in sufficient time to register for or avail themselves of those services each term for two consecutive academic years thereafter and are notified of the right of a pupil to file a complaint regarding those services as set forth in Section 35186. In addition to notifying the pupil, or his or her parent or legal guardian if the pupil is under the age of 18, in writing, the notice shall be posted in the school office and district office and on the Internet Web site of the school district, if applicable. The notice shall comply with the translation requirements of Section 48985.

(4) Ensure that all pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 have the opportunity to receive intensive instruction and services as needed based on the results of the diagnostic assessment and prior results on the high school exit examination, as specified in paragraph (2), for up to two consecutive academic years after completion of grade 12 or until the pupil has passed

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both parts of the high school exit examination, whichever comes first. A school district shall employ strategies for intensive instruction and services that are most likely to result in these pupils passing the parts of the high school exit examination that they have not yet passed.

(5) Ensure that all English learners who have not passed one or both parts of the high school exit examination by the end of grade 12 have the opportunity to receive intensive instruction and services provided under paragraph (3) of subdivision (c) that also shall include services to improve English proficiency as needed based on the results of the diagnostic assessment and prior results on the high school exit examination, as specified in paragraph (2), to pass those parts of the high school exit examination not yet passed, for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first. A school district shall employ strategies for intensive instruction and services that are most likely to result in these pupils passing the parts of the high school exit examination that they have not yet passed.

(6) Demonstrate that funds will be used to supplement and not supplant existing services.

(7) Provide to the Superintendent, in a manner and by a date certain determined by the Superintendent, the number of eligible pupils at each high school in the school district.

(8) Submit an annual report to the Superintendent and the appropriate county superintendent of schools in a manner determined by the Superintendent that describes the manner and frequency in which eligible pupils were notified of the intensive instruction and services provided, the number of pupils served for each type of service

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provided, and the number of pupils in the school district who successfully pass the high school exit examination by each type of service provided.

SEC. 4.5. Section 52378 of the Education Code is amended to read:

52378. The Middle and High School Supplemental Counseling Program is hereby established for the purpose of providing additional counseling services to pupils in grades 7 to 12, inclusive. As a condition of receiving funds, the governing board of each school district maintaining any of grades 7 to 12, inclusive, shall do all of the following:

(a) The program shall be adopted at a public meeting of the governing board of a school district and shall include all of the following:

(1) A provision for individualized review of the academic and department records of the pupil.

(2) A provision for individualized review of the career goals of, and the available academic and career technical education opportunities and community and workplace experiences available to, the pupil that may support the pursuit of the goals of the pupil.

(3) A provision for a counselor to meet with each pupil and if practicable, the parents or legal guardian of the pupil to explain the academic and department records of the pupil, his or her educational options, the coursework and academic progress needed for satisfactory completion of middle or high school, passage of the high school exit examination, and eligibility for admission to a four-year institution of postsecondary education, including the University of California and the California State University, as well as the availability of intensive instruction and services as required pursuant to subdivision (c) of Section 37254, for up to two consecutive academic years after the completion of grade 12 or until the pupil has passed both parts of the high school exit

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examination, whichever comes first, for those pupils who have not passed one or both parts of the high school exit examination by the end of grade 12, and the availability of career technical education. The educational options explained at the meeting, if services are available, shall include the college preparatory program and career technical education programs, including regional occupational centers and programs and any other alternatives available to pupils within the school district.

(b) In addition to the counseling services described in subdivision (a), school districts shall identify pupils who are at risk of not graduating with the rest of their class, are not earning credits at a rate that will enable them to pass the high school exit examination, or do not have sufficient training to allow them to fully engage in their chosen career, and shall do all of the following:

(1) Require each school within its jurisdiction that enrolls pupils in grades 10 and 12 to develop a list of coursework and experience necessary to assist each pupil in his or her respective grade that has not passed one or both parts of the high school exit examination or has not satisfied, or is not on track to satisfy, the curricular requirements for admission to the University of California and the California State University, and to successfully transition to postsecondary education or employment.

(2) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 who is deemed to be at the far below basic level in English language arts or mathematics pursuant to California Standards Tests administered to pupils in grade 6 to successfully transition to high school and meet all graduation requirements, including passing the high school exit

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examination.

(3) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 to begin to satisfy the curricular requirements for admission to the University of California and the California State University.

(4) Require each school within its jurisdiction to provide a copy of the lists developed pursuant to paragraphs (2) and (3) to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(5) Inform the pupil who has not passed one or both parts of the high school exit examination of the option of intensive instruction and services.

(c) (1) In addition to the items identified in subdivision (b), the list of coursework and experience for a pupil enrolled in grade 12 shall include options for continuing his or her education if he or she fails to meet graduation requirements. These options shall include, but not be limited to, all of the following:

(A) Enrolling in an adult education program.

(B) Enrolling in a community college.

(C) Continuing enrollment in the school district of the pupil.

(D) Continuing to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.

(2) A copy of the list of coursework and experience necessary shall be provided to the pupil and his or her parent or legal guardian. The school district shall ensure that the list

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of coursework and experience is part of the cumulative records of the pupil.

(d) As a condition of receipt of funds pursuant to this article, a school district shall require each school within its jurisdiction to offer and schedule an individual conference with each pupil, identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian, and a school counselor. The individual conference shall be scheduled, to the extent feasible, according to the following requirements:

(1) For a pupil enrolled in grade 7, the conference shall occur before January of that school year in which the pupil is enrolled in grade 7.

(2) For a pupil enrolled in grade 10, the conference shall occur between the spring of that school year in which the pupil is enrolled in grade 10 and the fall of the following school year in which the pupil would be enrolled in grade 11. For a school operating on a multitrack, year-round calendar, the conference for a pupil enrolled in grade 10 shall occur in the timeframe that is equivalent to that specified timeframe for a school operating on a traditional calendar.

(3) For a pupil enrolled in grade 12, the conference shall occur after November of that school year in which the pupil is enrolled in grade 12, but before March of the same school year. For a school operating on a multitrack, year-round calendar, the conference for a pupil enrolled in grade 12 shall occur in the timeframe that is equivalent to that specified timeframe for a school operating on a traditional calendar.

(e) During the individual conference described in subdivision (d), the school counselor shall apprise the pupil identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian of the following:

(1) Consequences of not passing the high school exit examination.

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- (2) Programs, courses, and career technical education options available for pupils needed for satisfactory completion of middle or high school.
- (3) Cumulative records and transcripts of the pupil.
- (4) Performance on standardized and diagnostic assessments of the pupil.
- (5) Remediation strategies, high school courses, and alternative education options available to the pupil, including, but not limited to, informing pupils of the option to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.
- (6) Information on postsecondary education and training.
- (7) The score of the pupil on the English language arts or mathematics portion of the California Standards Test administered in grade 6, as applicable.
- (8) Eligibility requirements, including coursework and test requirements, and the progress of the pupil toward satisfaction of those requirements for admission to four-year institutions of postsecondary education, including, at least, the University of California and the California State University.
- (9) The availability of financial aid for postsecondary education.

SEC. 5. Section 52380 of the Education Code is amended to read:

52380. As a condition of receipt of funds pursuant to this chapter, a school district shall submit an annual report to the Superintendent and the appropriate county superintendent of schools in a manner determined by the Superintendent that describes the number of pupils served, the number of school counselors

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involved in conferences, the number and percentage of pupils who participated in conferences and who successfully pass the high school exit examination, and the number and percentage of pupils who participated in conferences and who fail to pass one or both sections of the exit examination, and a summary of the most prevalent results for pupils based on the graduation plans developed pursuant to this chapter. The report also shall contain an assurance that the school district has complied with subdivision (e) of Section 52378.

SEC. 6. Section 52379 of the Education Code is amended to read: (SB 132 Section 33)

52379. (a) Funds appropriated in the annual Budget Act for the purposes of this chapter shall be allocated to school districts based on an equal amount per pupil enrolled in the district in the prior fiscal year, based on the fall California Basic Educational Data System (CBEDS) enrollment data, in grades 7 to 12, inclusive, with the following minimum-grant exceptions:

(1) Five thousand dollars (\$5,000) for each schoolsite that has 100 or fewer pupils enrolled in any of grades 7 to 12, inclusive.

(2) Ten thousand dollars (\$10,000) for each schoolsite that has at least 101, but not more than 200, pupils enrolled in any of grades 7 to 12, inclusive.

(3) Thirty thousand dollars (\$30,000) or an amount per pupil enrolled, whichever is greater, for each schoolsite with more than 200 pupils enrolled in any of grades 7 to 12, inclusive.

(b) Funds allocated pursuant to this section shall supplement, and not supplant, expenditures made by a school district for school counseling programs.

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(c) For purposes of this section, a charter school is not eligible to receive a minimum grant but instead shall receive an amount per pupil enrolled in grades 7 to 12, inclusive.

(d) Funds appropriated in the annual Budget Act for the purposes of this chapter shall be used to provide supplemental counseling services delivered by personnel who hold a valid pupil personnel services credential.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 8. (a) Of the funds appropriated in Item 6110-266-0001 of Section 2.00 of the Budget Act of 2007, up to one million five hundred thousand dollars (\$1,500,000) may be used to provide funding to county offices of education for the oversight activities required pursuant to subparagraph (E) of paragraph (2) of subdivision (c) of Section 1240 of the Education Code. The statewide organization that represents county superintendents of schools shall recommend a methodology for allocation of these funds to the Superintendent of Public Instruction by October 1, 2007. The Superintendent of Public Instruction may modify the methodology, subject to approval by the Department of Finance and 30-day notification to the appropriate policy and fiscal committees of the Legislature. Funds shall not be allocated prior to the expiration of the 30-day notification period.

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(b) It is the intent of the Legislature that the allocation method specified in subdivision (a) be applied for the 2007-08 fiscal year and the determination of allocations for the 2008-09 fiscal year and each fiscal year thereafter be subject to the normal budget process.

REGULATORY MANDATES

Regulations

Title 5, Section 1204.5

TITLE 5. EDUCATION
DIVISION 1. CALIFORNIA DEPARTMENT OF EDUCATION
CHAPTER 2. PUPILS
SUBCHAPTER 6. CALIFORNIA HIGH SCHOOL EXIT EXAMINATION
ARTICLE 2. HIGH SCHOOL EXIT EXAMINATION ADMINISTRATION

This database is current through 9/19/08, Register 2008, No. 38
§ 1204.5. Grades 11 and 12 and Adult Student Testing Dates.

- a) School districts shall provide eligible pupils in grade 11 at least two opportunities per school year to take the section(s) of the examination not yet passed. Eligible pupils in grade 11 may take the section(s) of the examination not yet passed up to two times per school year and may take examination in successive administrations.
- (b) School districts shall provide eligible pupils in grade 12 at least three opportunities per school year to take the section(s) of the examination not yet passed. Eligible pupils in grade 12 may take the section(s) of the examination not yet passed up to three times per school year and may take the examination in successive administrations.
- (c) School districts shall provide eligible adult students at least three opportunities per school year to take the section(s) of the examination not yet passed. Eligible adult students may take the section(s) of the examination not yet passed up to three times per school year and may take the examination in successive administrations.
- (d) Eligible pupils in grades 11 and 12 and eligible adult students should be offered appropriate remediation or supplemental instruction before being retested.

Note: Authority cited: Section 33031, Education Code. Reference: Sections 37252,

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37254 and 60851, Education Code.

(C) The actual increased costs incurred by the claimant during the fiscal year for which the claim was filed to implement the alleged mandate.

The claimant's estimated annual expense is \$375,000.

(D) The actual or estimated annual costs that will be incurred by the claimant to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

The claimant's estimated annual expense is \$375,000.

(E) A statewide cost estimate of increased costs that all local agencies or school districts will incur to implement the alleged mandate during the fiscal year immediately following the fiscal year for which the claim was filed.

The claimant's estimated annual expense is \$375,000. Based on the claimant's student enrollment it is estimated the statewide costs would be \$10 million.

(F) Identification of all of the following funding sources available for this program:

NONE

(i) Dedicated state funds

Appropriated in Item 6110-266-0001 of Section 2.00 of the Budget Act of 2007.

(ii) Dedicated federal funds

NONE

(iii) Other non-local agency funds

NONE

(iv) The local agency's general purpose funds

NONE

(v) Fee authority to offset costs

NONE

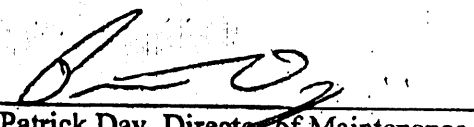
High School Exit Examination II

(G) Identification of prior mandate determinations made by the Board of Control or the Commission on State Mandates that may be related to the alleged mandate.

1. On March 25, 2004 the Commission on State Mandates adopted the decision to approve the test claim entitled High School Exit Examination (00-TC-06).
2. 07 TC-06 Williams Case Implementation II (Pending)

8. CLAIM CERTIFICATION

This test claim alleges the existence of a reimbursable state-mandated program within the meaning of Article XIII B, section 6 of the California Constitution and Government Code section 17514. I hereby declare, under penalty of perjury under the laws of the state of California, that the information in this test claim submission is true and correct to the best of my own knowledge or information or belief.


Patrick Day, Director of Maintenance,
Operations, Purchasing, Contract Management
San Jose Unified School District

Oct. 9, 2008
Date

DECLARATION OF PATRICK DAY

SAN JOSE UNIFIED SCHOOL DISTRICT

Test Claim of San Jose Unified School District
Chapter 526, Statutes of 2007
Chapter 730, Statutes of 2007
Education Code Sections 37254, 52378, 52379, 52380
High School Exit Exam II

I, Patrick Day, Director of Maintenance, Operations, Purchasing, Contract Management at San Jose Unified School District, make the following declaration and statement:

In my capacity as the Director, I am familiar with the provisions and requirements of Chapter 526 and Chapter 730 (Statutes of 2007).

Education Code sections 37254, 52378, 52379, 52380, as modified by Chapter 526 and Chapter 730 require public schools to perform the following new activities resulting in increased direct and indirect costs of labor, materials and supplies, contracted services and consultants:

1. School Districts must offer students who have failed one or both parts of the High School Exit Examination by the end of 12th grade the opportunity to receive intensive support and assistance for two years following the completion of 12th grade. **(Education Code section 37254)**

2. The legislation requires that districts notify, in writing, that intensive services are available to eligible students for two years following 12th grade. A notice must also be posted in the school site office, district office, and on the school district's website. **(Education Code sections 37254, 52378)**

3. A school district may employ different intensive instruction and services strategies more aligned to the needs and circumstances of pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 as compared to grade 12 pupils with similar needs in a comprehensive school of the district. Eligible students may receive intensive instruction and services on Saturdays, evenings, or at a time and location deemed appropriate by the school district in order to meet the needs of these pupils. "Eligible pupil" means a pupil who has not met the California High School Exit Examination requirement and who has failed one or both parts of the examination by the end of grade 12. (**Education Code section 37254**)

4. Intensive Instruction and services may include, but are not limited to, all of the following:

- Individual or small group instruction.
- The hiring of additional teachers.
- Purchasing, scoring, and reviewing diagnostic assessments.
- Appropriate teacher training to meet the needs of eligible pupils.
- The provision of instruction and services by a public or nonpublic entity, as determined by the local educational agency.
- Instruction in English language arts or mathematics, or both, that eligible pupils need to pass those parts of the high school exit examination not yet passed. A school district may employ different intensive instruction and

services strategies more aligned to the needs and circumstances of pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 as compared to grade 12 pupils with similar needs in a comprehensive high school of the district.

- The provision of instruction and services by a public or nonpublic entity, as determined by the local educational agency. (**Education Code section 37254**)

5. School Districts must ensure that each eligible pupil receives an appropriate diagnostic assessment to identify areas of need and submit an annual report to the Superintendent of Public Instruction relating to the provision of intensive instruction and services to pupils. (**Education Code section 37254**)

COST TO IMPLEMENT THE MANDATE

The actual and/or estimated costs resulting from the mandate exceed one thousand dollars (\$1,000) for the San Jose Unified School District. The estimated annual costs to perform the activities required by Education Code sections 37254 and 52378 are approximately \$375,000.

FUNDING SOURCES

STATE FUNDS

Appropriated in Item 6110-266-0001 of Section 2.00 of the Budget Act of 2007. It is the intent of the Legislature that the allocation method specified in subdivision (a) be applied for the 2007-08 fiscal year and the determination of allocations for the 2008-09

fiscal year and each fiscal year thereafter be subject to the normal budget process.

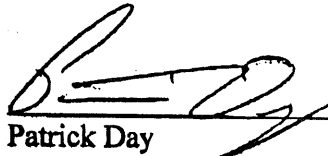
However, none of the funds have been specifically identified as applicable to the increased activities required by Statutes of 2007, Chapter 526 and Chapter 730.

OTHER FUNDS

None.

I hereby declare, under penalty of perjury under the laws of the state of California, that the information in this test claim submission is true and correct to the best of my own knowledge or information or belief.

EXECUTED 8th day of October, 2008 in San Jose, California.



Patrick Day
Director of Maintenance, Operations, Purchasing, Contract Management
San Jose Unified School District

BILL NUMBER: AB 347 CHAPTERED
 BILL TEXT

CHAPTER 526
 FILED WITH SECRETARY OF STATE OCTOBER 12, 2007
 APPROVED BY GOVERNOR OCTOBER 12, 2007
 PASSED THE SENATE SEPTEMBER 10, 2007
 PASSED THE ASSEMBLY SEPTEMBER 11, 2007
 AMENDED IN SENATE SEPTEMBER 6, 2007
 AMENDED IN SENATE SEPTEMBER 4, 2007
 AMENDED IN SENATE JULY 12, 2007
 AMENDED IN SENATE JULY 5, 2007
 AMENDED IN SENATE JUNE 20, 2007
 AMENDED IN ASSEMBLY JUNE 1, 2007
 AMENDED IN ASSEMBLY MAY 10, 2007
 AMENDED IN ASSEMBLY APRIL 30, 2007
 AMENDED IN ASSEMBLY APRIL 10, 2007

INTRODUCED BY Assembly Member Nava

FEBRUARY 14, 2007

An act to amend Sections 1240, 35186, 37254, 52378, and 52380 of the Education Code, relating to pupil instruction, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 347, Nava. Pupils: high school exit examination: intensive instruction and services.

(1) Existing law requires each pupil completing grade 12 to successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school.

Existing law provides specified funding for eligible pupils, as defined, who are required to pass the high school exit examination, to be used for intensive instruction and services for those pupils, and provides for the allocation of those funds, based on a per pupil rate calculation, to schools. As a condition of receiving funding, a school district is required to accomplish certain matters, including, among other things, ensure that each eligible pupil receives an appropriate diagnostic assessment to identify that pupil's areas of need and submit an annual report to the Superintendent of Public Instruction relating to the provision of intensive instruction and services to pupils.

This bill, among other things, would revise the definition of "eligible pupil" to include pupils who have not satisfied the requirement that they pass the high school exit examination in order to graduate from high school and have failed one or both parts of the examination by the end of grade 12; revise the calculation for determining the per pupil rate for purposes of funding; authorize the receipt of intensive instruction and services on Saturdays, evenings, or at a time and location deemed appropriate by the school district for eligible pupils; expand the authorized scope of intensive instruction and services to include instruction in English language arts or mathematics, or both, that eligible pupils need to pass those parts of the high school exit examination not yet passed and the provision of instruction and services by a public or nonpublic entity as determined by the local educational agency; require a school district to accomplish additional matters relating to pupils who have not passed one or both parts of the exit examination by the end of grade 12; and require the annual report to

also include information relating to the notification of eligible pupils of the intensive instruction and services provided and be submitted to the appropriate county superintendent of schools.

(2) Existing law requires a school district to use its uniform complaint process to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, and teacher vacancy or misassignment. A notice regarding the appropriate subjects of a complaint is required to be posted in each classroom in each school in the school district and a complaint regarding those deficiencies is required to be filed with the principal of the school or his or her designee.

This bill also would require a school district to use its uniform complaint process to help identify and resolve any deficiencies related to intensive instruction and services provided to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12. The bill would also require the notice, for certain classrooms, to include certain information about the entitlement to receive the intensive instruction and services, and would require a complaint regarding any deficiency related to intensive instruction and services to be submitted to the district official designated by the district superintendent. By imposing additional duties on school districts, this bill would impose a state-mandated local program.

(3) Existing law establishes the Middle and High School Supplemental Counseling Program and requires the governing board of a school district that maintains any of grades 7 to 12, inclusive, as a condition of receiving funds appropriated for purposes of that program, to adopt a counseling program at a public meeting that includes, among other things, a provision for a counselor to meet with each pupil, as specified, to explain the academic and department records of the pupil, his or her educational options, the coursework and academic progress needed for satisfactory completion of middle or high school, passage of the high school exit examination, and the availability of career technical education. In addition to these counseling services, a school district is required to identify certain pupils, such as those at risk of not graduating with the rest of their class, and to require its schools to provide certain assistance in developing a list of coursework and experience. As a further condition of receipt of funds, a school district is required to submit an annual report in a manner determined by the Superintendent that describes certain matters, including the number and percentage of pupils who participated in conferences and who fail to pass one or both sections of the high school exit examination.

This bill also would require the counselor to explain the availability, for up to 2 consecutive academic years after the completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, of intensive instruction and services for those pupils who have not passed one or both parts of the exit examination by the end of grade 12. The bill also would require a school district, for the identified pupils, to inform a pupil who has not passed one or both parts of the high school exit examination of the option of intensive instruction and services. The bill would require the report also to be submitted to the appropriate county superintendent of schools and contain an assurance that the school district has complied with the provision that requires a school counselor to apprise a pupil of certain information during an individual conference.

(4) Existing law requires a county superintendent of schools to undertake specified duties regarding the oversight of the school districts within his or her jurisdiction.

This bill would require a county superintendent of schools to perform additional duties related to conducting school visits and verifying that pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to 2

consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the exit examination, whichever comes first, and verifying that those pupils who elected to receive the instruction and services are being served. By imposing additional duties on local educational agencies or officials, the bill would impose a state-mandated local program.

(5) This bill would make other technical, nonsubstantive changes to existing law.

(6) This bill also would incorporate additional changes in Section 52378 of the Education Code, proposed by SB 405, to be operative if SB 405 and this bill are both enacted and become effective on or before January 1, 2008, and this bill is enacted last.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(8) By specifying a new purpose for the use of \$1.5 million of funds that would be appropriated to the State Department of Education in the Budget Act of 2007 for allocation to county offices of education, this bill would make an appropriation.

To the extent that the funds appropriated by this bill are allocated to a school district, which is defined to include, but is not limited to, a county board of education and a county superintendent of schools, which govern and administer, respectively, a county office of education, those funds would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(9) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1240 of the Education Code is amended to read:

1240. The county superintendent of schools shall do all of the following:

(a) Superintend the schools of his or her county.

(b) Maintain responsibility for the fiscal oversight of each school district in his or her county pursuant to the authority granted by this code.

(c) (1) Visit and examine each school in his or her county at reasonable intervals to observe its operation and to learn of its problems. He or she annually may present a report of the state of the schools in his or her county, and of his or her office, including, but not limited to, his or her observations while visiting the schools, to the board of education and the board of supervisors of his or her county.

(2) (A) For fiscal years 2004-05 to 2006-07, inclusive, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2003 base Academic Performance Index (API), as defined in subdivision (b) of Section 17592.70, and shall include, among other things, his or her observations while visiting the schools and his or her determinations for each school regarding the status of all of the circumstances listed in

subparagraph (J) and teacher misassignments and teacher vacancies. As a condition for receipt of funds, the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details for each school.

(B) Commencing with the 2007-08 fiscal year, to the extent that funds are appropriated for purposes of this paragraph, the county superintendent, or his or her designee, annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county describing the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the 2006 base API, pursuant to Section 52056. As a condition for the receipt of funds, the annual report shall include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision. For purposes of this section, schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall include schools determined by the department to meet either of the following:

(i) The school meets all of the following criteria:

(I) Does not have a valid base API score for 2006.

(II) Is operating in fiscal year 2007-08 and was operating in fiscal year 2006-07 during the Standardized Testing and Reporting (STAR) Program testing period.

(III) Has a valid base API score for 2005 that was ranked in deciles 1 to 3, inclusive, in that year.

(ii) The school has an estimated base API score for 2006 that would be in deciles 1 to 3, inclusive.

(C) The department shall estimate an API score for any school meeting the criteria of subclauses (I) and (II) of clause (i) of subparagraph (B) and not meeting the criteria of subclause (III) of clause (i) of subparagraph (B), using available test scores and weighting or corrective factors it deems appropriate. The department shall post the API scores on its Internet Web site on or before May 1.

(D) For purposes of this section, references to schools ranked in deciles 1 to 3, inclusive, on the 2006 base API shall exclude schools operated by county offices of education pursuant to Section 56140, as determined by the department.

(E) In addition to the requirements above, the county superintendent, or his or her designee, annually shall verify both of the following:

(i) That pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(ii) That pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

(F) (i) Commencing with the 2010-11 fiscal year and every third year thereafter, the Superintendent shall identify a list of schools ranked in deciles 1 to 3, inclusive, of the API for which the county

superintendent, or his or her designee, annually shall submit a report, at a regularly scheduled November board meeting, to the governing board of each school district under his or her jurisdiction, the county board of education of his or her county, and the board of supervisors of his or her county that describes the state of the schools in the county or of his or her office that are ranked in deciles 1 to 3, inclusive, of the base API as defined in clause (ii).

(ii) For the 2010-11 fiscal year, the list of schools ranked in deciles 1 to 3, inclusive, of the base API shall be updated using the criteria set forth in clauses (i) and (ii) of subparagraph (B), subparagraph (C), and subparagraph (D), as applied to the 2009 base API and thereafter shall be updated every third year using the criteria set forth in clauses (i) and (ii) of subparagraph (B), subparagraph (C), and subparagraph (D), as applied to the base API of the year preceding the third year consistent with clause (i).

(iii) As a condition for the receipt of funds, the annual report shall include the determinations for each school made by the county superintendent, or his or her designee, regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, and the county superintendent, or his or her designee, shall use a standardized template to report the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies, unless the current annual report being used by the county superintendent, or his or her designee, already includes those details with the same level of specificity that is otherwise required by this subdivision.

(G) The county superintendent of the Counties of Alpine, Amador, Del Norte, Mariposa, Plumas, and Sierra, and the City and County of San Francisco shall contract with another county office of education or an independent auditor to conduct the required visits and make all reports required by this paragraph.

(H) On a quarterly basis, the county superintendent, or his or her designee, shall report the results of the visits and reviews conducted that quarter to the governing board of the school district at a regularly scheduled meeting held in accordance with public notification requirements. The results of the visits and reviews shall include the determinations of the county superintendent, or his or her designee, for each school regarding the status of all of the circumstances listed in subparagraph (J) and teacher misassignments and teacher vacancies. If the county superintendent, or his or her designee, conducts no visits or reviews in a quarter, the quarterly report shall report that fact.

(I) The visits made pursuant to this paragraph shall be conducted at least annually and shall meet the following criteria:

(i) Minimize disruption to the operation of the school.

(ii) Be performed by individuals who meet the requirements of Section 45125.1.

(iii) Consist of not less than 25 percent unannounced visits in each county. During unannounced visits in each county, the county superintendent shall not demand access to documents or specific school personnel. Unannounced visits shall only be used to observe the condition of school repair and maintenance, and the sufficiency of instructional materials, as defined by Section 60119.

(J) The priority objective of the visits made pursuant to this paragraph shall be to determine the status of all of the following circumstances:

(i) Sufficient textbooks as defined in Section 60119 and as specified in subdivision (i).

(ii) The condition of a facility that poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy or paragraph (1) of subdivision (c) of Section 17592.72.

(iii) The accuracy of data reported on the school accountability report card with respect to the availability of sufficient textbooks and instructional materials, as defined by Section 60119, and the

safety, cleanliness, and adequacy of school facilities, including good repair as required by Sections 17014, 17032.5, 17070.75, and 17089.

(iv) The extent to which pupils who have not passed the high school exit examination by the end of grade 12 are informed that they are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(v) The extent to which pupils who have elected to receive intensive instruction and services, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254, are being served.

(K) The county superintendent may make the status determinations described in subparagraph (J) during a single visit or multiple visits. In determining whether to make a single visit or multiple visits for this purpose, the county superintendent shall take into consideration factors such as cost-effectiveness, disruption to the schoolsite, deadlines, and the availability of qualified reviewers.

(L) If the county superintendent determines that the condition of a facility poses an emergency or urgent threat to the health or safety of pupils or staff as defined in district policy or paragraph (1) of subdivision (c) of Section 17592.72, or is not in good repair, as specified in subdivision (d) of Section 17002 and required by Sections 17014, 17032.5, 17070.75, and 17089, the county superintendent, among other things, may do any of the following:

(i) Return to the school to verify repairs.

(ii) Prepare a report that specifically identifies and documents the areas or instances of noncompliance if the district has not provided evidence of successful repairs within 30 days of the visit of the county superintendent or, for major projects, has not provided evidence that the repairs will be conducted in a timely manner. The report may be provided to the governing board of the school district. If the report is provided to the school district, it shall be presented at a regularly scheduled meeting held in accordance with public notification requirements. The county superintendent shall post the report on his or her Internet Web site. The report shall be removed from the Internet Web site when the county superintendent verifies the repairs have been completed.

(d) Distribute all laws, reports, circulars, instructions, and blanks that he or she may receive for the use of the school officers.

(e) Annually, on or before August 15, present a report to the governing board of the school district and the Superintendent regarding the fiscal solvency of a school district with a disapproved budget, qualified interim certification, or a negative interim certification, or that is determined to be in a position of fiscal uncertainty pursuant to Section 42127.6.

(f) Keep in his or her office the reports of the Superintendent.

(g) Keep a record of his or her official acts, and of all the proceedings of the county board of education, including a record of the standing, in each study, of all applicants for certificates who have been examined, which shall be open to the inspection of an applicant or his or her authorized agent.

(h) Enforce the course of study.

(i) (1) Enforce the use of state textbooks and instructional materials and of high school textbooks and instructional materials regularly adopted by the proper authority in accordance with Section 51050.

(2) For purposes of this subdivision, sufficient textbooks or instructional materials has the same meaning as in subdivision (c) of Section 60119.

(3) (A) Commencing with the 2005-06 school year, if a school is ranked in any of deciles 1 to 3, inclusive, of the base API, as specified in paragraph (2) of subdivision (c), and not currently under review pursuant to a state or federal intervention program, the

county superintendent specifically shall review that school at least annually as a priority school. A review conducted for purposes of this paragraph shall be completed by the fourth week of the school year. For the 2004-05 fiscal year only, the county superintendent shall make a diligent effort to conduct a visit to each school pursuant to this paragraph within 120 days of receipt of funds for this purpose.

(B) In order to facilitate the review of instructional materials before the fourth week of the school year, the county superintendent in a county with 200 or more schools that are ranked in any of deciles 1 to 3, inclusive, of the base API, as specified in paragraph (2) of subdivision (c), may utilize a combination of visits and written surveys of teachers for the purpose of determining sufficiency of textbooks and instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined in subdivision (c) of Section 60119. If a county superintendent elects to conduct written surveys of teachers, the county superintendent shall visit the schools surveyed within the same academic year to verify the accuracy of the information reported on the surveys. If a county superintendent surveys teachers at a school in which the county superintendent has found sufficient textbooks and instructional materials for the previous two consecutive years and determines that the school does not have sufficient textbooks or instructional materials, the county superintendent shall within 10 business days provide a copy of the insufficiency report to the school district as set forth in paragraph (4).

(C) For purposes of this paragraph, "written surveys" may include paper and electronic or online surveys.

(4) If the county superintendent determines that a school does not have sufficient textbooks or instructional materials in accordance with subparagraph (A) of paragraph (1) of subdivision (a) of Section 60119 and as defined by subdivision (c) of Section 60119, the county superintendent shall do all of the following:

(A) Prepare a report that specifically identifies and documents the areas or instances of noncompliance.

(B) Provide within five business days of the review, a copy of the report to the school district, as provided in subdivision (c), or, if applicable, provide a copy of the report to the school district within 10 business days pursuant to subparagraph (B) of paragraph (3).

(C) Provide the school district with the opportunity to remedy the deficiency. The county superintendent shall ensure remediation of the deficiency no later than the second month of the school term.

(D) If the deficiency is not remedied as required pursuant to subparagraph (C), the county superintendent shall request the department to purchase the textbooks or instructional materials necessary to comply with the sufficiency requirement of this subdivision. If the department purchases textbooks or instructional materials for the school district, the department shall issue a public statement at the first regularly scheduled meeting of the state board occurring immediately after the department receives the request of the county superintendent and that meets the applicable public notice requirements, indicating that the district superintendent and the governing board of the school district failed to provide pupils with sufficient textbooks or instructional materials as required by this subdivision. Before purchasing the textbooks or instructional materials, the department shall consult with the district to determine which textbooks or instructional materials to purchase. All purchases of textbooks or instructional materials shall comply with Chapter 3.25 (commencing with Section 60420) of Part 33. The amount of funds necessary for the purchase of the textbooks and materials is a loan to the school district receiving the textbooks or instructional materials. Unless the school district repays the amount owed based upon an agreed-upon repayment schedule with the Superintendent, the Superintendent shall notify the

Controller and the Controller shall deduct an amount equal to the total amount used to purchase the textbooks and materials from the next principal apportionment of the district or from another apportionment of state funds.

(j) Preserve carefully all reports of school officers and teachers.

(k) Deliver to his or her successor, at the close of his or her official term, all records, books, documents, and papers belonging to the office, taking a receipt for them, which shall be filed with the department.

(l) (1) Submit two reports during the fiscal year to the county board of education in accordance with the following:

(A) The first report shall cover the financial and budgetary status of the county office of education for the period ending October 31. The second report shall cover the period ending January 31. Both reports shall be reviewed by the county board of education and approved by the county superintendent no later than 45 days after the close of the period being reported.

(B) As part of each report, the county superintendent shall certify in writing whether or not the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for two subsequent fiscal years. The certifications shall be classified as positive, qualified, or negative, pursuant to standards prescribed by the Superintendent, for the purposes of determining subsequent state agency actions pursuant to Section 1240.1. For purposes of this subdivision, a negative certification shall be assigned to a county office of education that, based upon current projections, will not meet its financial obligations for the remainder of the fiscal year or for the subsequent fiscal year. A qualified certification shall be assigned to a county office of education that may not meet its financial obligations for the current fiscal year or two subsequent fiscal years. A positive certification shall be assigned to a county office of education that will meet its financial obligations for the current fiscal year and subsequent two fiscal years. In accordance with those standards, the Superintendent may reclassify a certification. If a county office of education receives a negative certification, the Superintendent, or his or her designee, may exercise the authority set forth in subdivision (c) of Section 1630. Copies of each certification, and of the report containing that certification, shall be sent to the Superintendent at the time the certification is submitted to the county board of education. Copies of each qualified or negative certification and the report containing that certification shall be sent to the Controller at the time the certification is submitted to the county board of education.

(2) All reports and certifications required under this subdivision shall be in a format or on forms prescribed by the Superintendent, and shall be based on standards and criteria for fiscal stability adopted by the state board pursuant to Section 33127. The reports and supporting data shall be made available by the county superintendent to an interested party upon request.

(3) This subdivision does not preclude the submission of additional budgetary or financial reports by the county superintendent to the county board of education or to the Superintendent.

(4) The county superintendent is not responsible for the fiscal oversight of the community colleges in the county, however, he or she may perform financial services on behalf of those community colleges.

(m) If requested, act as agent for the purchase of supplies for the city and high school districts of his or her county.

(n) For purposes of Section 44421.5, report to the Commission on Teacher Credentialing the identity of a certificated person who knowingly and willingly reports false fiscal expenditure data relative to the conduct of an educational program. This requirement applies only if, in the course of his or her normal duties, the

county superintendent discovers information that gives him or her reasonable cause to believe that false fiscal expenditure data relative to the conduct of an educational program has been reported.

SEC. 2. Section 35186 of the Education Code is amended to read:

35186. (a) A school district shall use the uniform complaint process it has adopted as required by Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations, with modifications, as necessary, to help identify and resolve any deficiencies related to instructional materials, emergency or urgent facilities conditions that pose a threat to the health and safety of pupils or staff, teacher vacancy or misassignment, and intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12.

(1) A complaint may be filed anonymously. A complainant who identifies himself or herself is entitled to a response if he or she indicates that a response is requested. A complaint form shall include a space to mark to indicate whether a response is requested. If Section 48985 is otherwise applicable, the response, if requested, and report shall be written in English and the primary language in which the complaint was filed. All complaints and responses are public records.

(2) The complaint form shall specify the location for filing a complaint. A complainant may add as much text to explain the complaint as he or she wishes.

(3) Except as provided pursuant to paragraph (4), a complaint shall be filed with the principal of the school or his or her designee. A complaint about problems beyond the authority of the school principal shall be forwarded in a timely manner but not to exceed 10 working days to the appropriate school district official for resolution.

(4) A complaint regarding any deficiencies related to intensive instruction and services provided pursuant to Section 37254 to pupils who have not passed one or both parts of the high school exit examination after the completion of grade 12 shall be submitted to the district official designated by the district superintendent. A complaint may be filed at the school district office, or it may be filed at the schoolsite and shall be immediately forwarded to the designee of the district superintendent.

(b) The principal or the designee of the district superintendent, as applicable, shall make all reasonable efforts to investigate any problem within his or her authority. The principal or designee of the district superintendent shall remedy a valid complaint within a reasonable time period but not to exceed 30 working days from the date the complaint was received. The principal or designee of the district superintendent shall report to the complainant the resolution of the complaint within 45 working days of the initial filing. If the principal makes this report, the principal shall also report the same information in the same timeframe to the designee of the district superintendent.

(c) A complainant not satisfied with the resolution of the principal or the designee of the district superintendent has the right to describe the complaint to the governing board of the school district at a regularly scheduled hearing of the governing board. As to complaints involving a condition of a facility that poses an emergency or urgent threat, as defined in paragraph (1) of subdivision (c) of Section 17592.72, a complainant who is not satisfied with the resolution proffered by the principal or the designee of the district superintendent has the right to file an appeal to the Superintendent, who shall provide a written report to the state board describing the basis for the complaint and, as appropriate, a proposed remedy for the issue described in the complaint.

(d) A school district shall report summarized data on the nature and resolution of all complaints on a quarterly basis to the county superintendent of schools and the governing board of the school

district. The summaries shall be publicly reported on a quarterly basis at a regularly scheduled meeting of the governing board of the school district. The report shall include the number of complaints by general subject area with the number of resolved and unresolved complaints. The complaints and written responses shall be available as public records.

(e) The procedure required pursuant to this section is intended to address all of the following:

(1) A complaint related to instructional materials as follows:

(A) A pupil, including an English learner, does not have standards-aligned textbooks or instructional materials or state-adopted or district-adopted textbooks or other required instructional material to use in class.

(B) A pupil does not have access to instructional materials to use at home or after school.

(C) Textbooks or instructional materials are in poor or unusable condition, have missing pages, or are unreadable due to damage.

(2) A complaint related to teacher vacancy or misassignment as follows:

(A) A semester begins and a teacher vacancy exists.

(B) A teacher who lacks credentials or training to teach English learners is assigned to teach a class with more than 20-percent English learner pupils in the class. This subparagraph does not relieve a school district from complying with state or federal law regarding teachers of English learners.

(C) A teacher is assigned to teach a class for which the teacher lacks subject matter competency.

(3) A complaint related to the condition of facilities that pose an emergency or urgent threat to the health or safety of pupils or staff as defined in paragraph (1) of subdivision (c) of Section 17592.72 and any other emergency conditions the school district determines appropriate and the requirements established pursuant to subdivision (a) of Section 35292.5.

(4) A complaint related to the provision of intensive instruction and services pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254.

(f) In order to identify appropriate subjects of complaint, a notice shall be posted in each classroom in each school in the school district notifying parents, guardians, pupils, and teachers of the following:

(1) There should be sufficient textbooks and instructional materials. For there to be sufficient textbooks and instructional materials each pupil, including English learners, must have a textbook or instructional materials, or both, to use in class and to take home.

(2) School facilities must be clean, safe, and maintained in good repair.

(3) There should be no teacher vacancies or misassignments as defined in paragraphs (2) and (3) of subdivision (h).

(4) Pupils who have not passed the high school exit examination by the end of grade 12 are entitled to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, pursuant to paragraphs (4) and (5) of subdivision (d) of Section 37254. The information in this paragraph, which is to be included in the notice required pursuant to this subdivision, shall only be included in notices posted in classrooms in schools with grades 10 to 12, inclusive.

(5) The location at which to obtain a form to file a complaint in case of a shortage. Posting a notice downloadable from the Internet Web site of the department shall satisfy this requirement.

(g) A local educational agency shall establish local policies and procedures, post notices, and implement this section on or before January 1, 2005.

(h) For purposes of this section, the following definitions apply:

(1) "Good repair" has the same meaning as specified in subdivision (d) of Section 17002.

(2) "Misassignment" means the placement of a certificated employee in a teaching or services position for which the employee does not hold a legally recognized certificate or credential or the placement of a certificated employee in a teaching or services position that the employee is not otherwise authorized by statute to hold.

(3) "Teacher vacancy" means a position to which a single designated certificated employee has not been assigned at the beginning of the year for an entire year or, if the position is for a one-semester course, a position to which a single designated certificated employee has not been assigned at the beginning of a semester for an entire semester.

SEC. 3. Section 37254 of the Education Code is amended to read:

37254. (a) For purposes of this section, "eligible pupil" means a pupil who has not met the California High School Exit Examination requirement for high school graduation pursuant to Chapter 8 (commencing with Section 60850) of Part 33, and who has failed one or both parts of that examination by the end of grade 12.

(b) (1) From the funds appropriated for purposes of this section in the annual Budget Act or other statute, the Superintendent shall determine a per pupil rate of funding by dividing the total amount of funds appropriated for purposes of this section by the number of eligible pupils in grade 12 as reported by school districts in accordance with paragraph (7) of subdivision (d). The Superintendent shall then apportion to each school district an amount equal to the per pupil rate determined pursuant to this paragraph multiplied by the number of eligible grade 12 pupils reported pursuant to paragraph (7) of subdivision (d).

(2) If funds appropriated for purposes of paragraph (1) are not exhausted after the apportionment pursuant to paragraph (1) is made, the Superintendent shall determine a per pupil rate of funding for eligible pupils in grade 11 by dividing the total amount of funds appropriated for purposes of this section remaining after the apportionment pursuant to paragraph (1) has been made by dividing the total number of eligible pupils in grade 11 reported by school districts in accordance with paragraph (7) of subdivision (d). The Superintendent shall apportion to each school district an amount equal to the per pupil rate determined pursuant to this paragraph multiplied by the number of eligible grade 11 pupils reported pursuant to paragraph (7) of subdivision (d).

(3) The maximum per pupil rate of funding shall not exceed five hundred dollars (\$500) and shall be increased annually by the percentage determined in paragraph (2) of subdivision (b) of Section 42238.1

(c) (1) The funds described in subdivision (b) shall be used to provide intensive instruction and services designed to help eligible pupils pass the California High School Exit Examination.

(2) Intensive instruction and services may be provided during the regular schoolday provided that they do not supplant the instruction of the pupil in the core curriculum areas as defined in paragraph (5) of subdivision (a) of Section 60603, or physical education instruction. Eligible pupils may receive intensive instruction and services on Saturdays, evenings, or at a time and location deemed appropriate by the school district in order to meet the needs of these pupils.

(3) Intensive instruction and services may include, but are not limited to, all of the following:

- (A) Individual or small group instruction.
- (B) The hiring of additional teachers.
- (C) Purchasing, scoring, and reviewing diagnostic assessments.
- (D) Counseling.
- (E) Designing instruction to meet specific needs of eligible pupils.
- (F) Appropriate teacher training to meet the needs of eligible

pupils.

(G) Instruction in English language arts or mathematics, or both, that eligible pupils need to pass those parts of the high school exit examination not yet passed. A school district may employ different intensive instruction and services strategies more aligned to the needs and circumstances of pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 as compared to grade 12 pupils with similar needs in a comprehensive high school of the district.

(H) The provision of instruction and services by a public or nonpublic entity, as determined by the local educational agency.

(d) As a condition of receiving funds pursuant to subdivision (c), the school district shall accomplish all of the following:

(1) Ensure that each eligible pupil receives an appropriate diagnostic assessment to identify that pupil's areas of need.

(2) Ensure that each pupil receives intensive instruction and services based on the results of the diagnostic assessment, and prior results on the high school exit examination.

(3) Ensure that all pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 are notified in writing at the last known address before the end of each school term of the availability of the services in sufficient time to register for or avail themselves of those services each term for two consecutive academic years thereafter and are notified of the right of a pupil to file a complaint regarding those services as set forth in Section 35186. In addition to notifying the pupil, or his or her parent or legal guardian if the pupil is under the age of 18, in writing, the notice shall be posted in the school office and district office and on the Internet Web site of the school district, if applicable. The notice shall comply with the translation requirements of Section 48985.

(4) Ensure that all pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 have the opportunity to receive intensive instruction and services as needed based on the results of the diagnostic assessment and prior results on the high school exit examination, as specified in paragraph (2), for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first. A school district shall employ strategies for intensive instruction and services that are most likely to result in these pupils passing the parts of the high school exit examination that they have not yet passed.

(5) Ensure that all English learners who have not passed one or both parts of the high school exit examination by the end of grade 12 have the opportunity to receive intensive instruction and services provided under paragraph (3) of subdivision (c) that also shall include services to improve English proficiency as needed based on the results of the diagnostic assessment and prior results on the high school exit examination, as specified in paragraph (2), to pass those parts of the high school exit examination not yet passed, for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first. A school district shall employ strategies for intensive instruction and services that are most likely to result in these pupils passing the parts of the high school exit examination that they have not yet passed.

(6) Demonstrate that funds will be used to supplement and not supplant existing services.

(7) Provide to the Superintendent, in a manner and by a date certain determined by the Superintendent, the number of eligible pupils at each high school in the school district.

(8) Submit an annual report to the Superintendent and the appropriate county superintendent of schools in a manner determined by the Superintendent that describes the manner and frequency in which eligible pupils were notified of the intensive instruction and services provided, the number of pupils served for each type of

service provided, and the number of pupils in the school district who successfully pass the high school exit examination by each type of service provided.

SEC. 4. Section 52378 of the Education Code is amended to read:

52378. The Middle and High School Supplemental Counseling Program is hereby established for the purpose of providing additional counseling services to pupils in grades 7 to 12, inclusive. As a condition of receiving funds, the governing board of each school district maintaining any of grades 7 to 12, inclusive, shall do all of the following:

(a) The program shall be adopted at a public meeting of the governing board and shall include all of the following:

(1) A provision for individualized review of the pupil's academic and deportment records.

(2) A provision for a counselor to meet with each pupil and if practicable, the parents or legal guardian of the pupil, to explain the academic and deportment records of the pupil, his or her educational options, the coursework and academic progress needed for satisfactory completion of middle or high school, passage of the high school exit examination, the availability of intensive instruction and services as required pursuant to subdivision (c) of Section 37254, for up to two consecutive academic years after the completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, for those pupils who have not passed one or both parts of the high school exit examination by the end of grade 12, and the availability of career technical education. The educational options explained at the meeting, if services are available, shall include college preparatory program and vocational programs, including regional occupational centers and programs and any other alternatives available to pupils within the district.

(b) In addition to the counseling services described in subdivision (a), school districts shall identify pupils who are at risk of not graduating with the rest of their class, are not earning credits at a rate that will enable them to pass the high school exit examination, or do not have sufficient training to allow them to fully engage in their chosen career, and shall do all of the following:

(1) Require each school within its jurisdiction that enrolls pupils in grades 10 and 12 to develop a list of coursework and experience necessary to assist each pupil in their respective grade that has not passed one or both parts of the high school exit examination and to successfully transition to postsecondary education or employment.

(2) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 who is deemed to be at the far below basic level in English language arts or mathematics pursuant to California Standards Tests administered to pupils in grade 6 to successfully transition to high school and meet all graduation requirements, including passing the high school exit examination.

(3) A copy of the list of coursework and experience necessary shall be provided to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(4) Inform the pupil who has not passed one or both parts of the high school exit examination of the option of intensive instruction and services.

(c) (1) In addition to the items identified in subdivision (b), the list of coursework and experience for a pupil enrolled in grade 12 shall include options for continuing his or her education if he or she fails to meet graduation requirements. These options shall include, but not be limited to, all of the following:

(A) Enrolling in an adult education program.

(B) Enrolling in a community college.

(C) Continuing enrollment in the pupil's school district.

(D) Continuing to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.

(2) A copy of the list of coursework and experience necessary shall be provided to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(d) As a condition of receipt of funds pursuant to this article, a school district shall require each school within its jurisdiction to offer and schedule an individual conference with each pupil, identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian, and a school counselor. The individual conference shall be scheduled, to the extent feasible, according to the following requirements:

(1) For a pupil enrolled in grade 7, the conference shall occur before January of that school year in which the pupil is enrolled in grade 7.

(2) For a pupil enrolled in grade 10, the conference shall occur between the spring of that school year in which the pupil is enrolled in grade 10 and the fall of the following school year in which the pupil would be enrolled in grade 11. For the 2006-07 school year, the conference shall occur on or before December 31, 2006.

(3) For a pupil enrolled in grade 12, the conference shall occur after November of that school year in which the pupil is enrolled in grade 12, but before March of the same school year.

(e) During the individual conference described in subdivision (d), the school counselor shall apprise the pupil identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian of the following:

(1) Consequences of not passing the high school exit examination.

(2) Programs, courses, and career technical education options available for pupils needed for satisfactory completion of middle or high school.

(3) Cumulative records and transcripts of the pupil.

(4) Performance on standardized and diagnostic assessments of the pupil.

(5) Remediation strategies, high school courses, and alternative education options available to the pupil, including, but not limited to, informing pupils of the option to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.

(6) Information on postsecondary education and training.

(7) The pupil's score on the English language arts or mathematics portion of the California Standards Test administered in grade 6, as applicable.

SEC. 4.5. Section 52378 of the Education Code is amended to read:

52378. The Middle and High School Supplemental Counseling Program is hereby established for the purpose of providing additional counseling services to pupils in grades 7 to 12, inclusive. As a condition of receiving funds, the governing board of each school district maintaining any of grades 7 to 12, inclusive, shall do all of the following:

(a) The program shall be adopted at a public meeting of the governing board of a school district and shall include all of the following:

(1) A provision for individualized review of the academic and department records of the pupil.

(2) A provision for individualized review of the career goals of, and the available academic and career technical education opportunities and community and workplace experiences available to, the pupil that may support the pursuit of the goals of the pupil.

(3) A provision for a counselor to meet with each pupil and if practicable, the parents or legal guardian of the pupil to explain the academic and deportment records of the pupil, his or her educational options, the coursework and academic progress needed for satisfactory completion of middle or high school, passage of the high school exit examination, and eligibility for admission to a four-year institution of postsecondary education, including the University of California and the California State University, as well as the availability of intensive instruction and services as required pursuant to subdivision (c) of Section 37254, for up to two consecutive academic years after the completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first, for those pupils who have not passed one or both parts of the high school exit examination by the end of grade 12, and the availability of career technical education. The educational options explained at the meeting, if services are available, shall include the college preparatory program and career technical education programs, including regional occupational centers and programs and any other alternatives available to pupils within the school district.

(b) In addition to the counseling services described in subdivision (a), school districts shall identify pupils who are at risk of not graduating with the rest of their class, are not earning credits at a rate that will enable them to pass the high school exit examination, or do not have sufficient training to allow them to fully engage in their chosen career, and shall do all of the following:

(1) Require each school within its jurisdiction that enrolls pupils in grades 10 and 12 to develop a list of coursework and experience necessary to assist each pupil in his or her respective grade that has not passed one or both parts of the high school exit examination or has not satisfied, or is not on track to satisfy, the curricular requirements for admission to the University of California and the California State University, and to successfully transition to postsecondary education or employment.

(2) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 who is deemed to be at the far below basic level in English language arts or mathematics pursuant to California Standards Tests administered to pupils in grade 6 to successfully transition to high school and meet all graduation requirements, including passing the high school exit examination.

(3) Require each school within its jurisdiction that enrolls pupils in grade 7 to develop a list of coursework and experience necessary to assist each pupil in grade 7 to begin to satisfy the curricular requirements for admission to the University of California and the California State University.

(4) Require each school within its jurisdiction to provide a copy of the lists developed pursuant to paragraphs (2) and (3) to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(5) Inform the pupil who has not passed one or both parts of the high school exit examination of the option of intensive instruction and services.

(c) (1) In addition to the items identified in subdivision (b), the list of coursework and experience for a pupil enrolled in grade 12 shall include options for continuing his or her education if he or she fails to meet graduation requirements. These options shall include, but not be limited to, all of the following:

(A) Enrolling in an adult education program.

(B) Enrolling in a community college.

(C) Continuing enrollment in the school district of the pupil.

(D) Continuing to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or

until the pupil has passed both parts of the high school exit examination, whichever comes first.

(2) A copy of the list of coursework and experience necessary shall be provided to the pupil and his or her parent or legal guardian. The school district shall ensure that the list of coursework and experience is part of the cumulative records of the pupil.

(d) As a condition of receipt of funds pursuant to this article, a school district shall require each school within its jurisdiction to offer and schedule an individual conference with each pupil, identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian, and a school counselor. The individual conference shall be scheduled, to the extent feasible, according to the following requirements:

(1) For a pupil enrolled in grade 7, the conference shall occur before January of that school year in which the pupil is enrolled in grade 7.

(2) For a pupil enrolled in grade 10, the conference shall occur between the spring of that school year in which the pupil is enrolled in grade 10 and the fall of the following school year in which the pupil would be enrolled in grade 11. For a school operating on a multitrack, year-round calendar, the conference for a pupil enrolled in grade 10 shall occur in the timeframe that is equivalent to that specified timeframe for a school operating on a traditional calendar.

(3) For a pupil enrolled in grade 12, the conference shall occur after November of that school year in which the pupil is enrolled in grade 12, but before March of the same school year. For a school operating on a multitrack, year-round calendar, the conference for a pupil enrolled in grade 12 shall occur in the timeframe that is equivalent to that specified timeframe for a school operating on a traditional calendar.

(e) During the individual conference described in subdivision (d), the school counselor shall apprise the pupil identified in paragraphs (1) and (2) of subdivision (b), and his or her parent or legal guardian of the following:

(1) Consequences of not passing the high school exit examination.

(2) Programs, courses, and career technical education options available for pupils needed for satisfactory completion of middle or high school.

(3) Cumulative records and transcripts of the pupil.

(4) Performance on standardized and diagnostic assessments of the pupil.

(5) Remediation strategies, high school courses, and alternative education options available to the pupil, including, but not limited to, informing pupils of the option to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first.

(6) Information on postsecondary education and training.

(7) The score of the pupil on the English language arts or mathematics portion of the California Standards Test administered in grade 6, as applicable.

(8) Eligibility requirements, including coursework and test requirements, and the progress of the pupil toward satisfaction of those requirements for admission to four-year institutions of postsecondary education, including, at least, the University of California and the California State University.

(9) The availability of financial aid for postsecondary education.

SEC. 5. Section 52380 of the Education Code is amended to read:

52380. As a condition of receipt of funds pursuant to this chapter, a school district shall submit an annual report to the Superintendent and the appropriate county superintendent of schools in a manner determined by the Superintendent that describes the number of pupils served, the number of school counselors involved in

conferences, the number and percentage of pupils who participated in conferences and who successfully pass the high school exit examination, and the number and percentage of pupils who participated in conferences and who fail to pass one or both sections of the exit examination, and a summary of the most prevalent results for pupils based on the graduation plans developed pursuant to this chapter. The report also shall contain an assurance that the school district has complied with subdivision (e) of Section 52378.

SEC. 6. Section 4.5 of this bill incorporates amendments to Section 52378 of the Education Code proposed by both this bill and SB 405. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2008, but this bill becomes operative first, (2) each bill amends Section 52378 of the Education Code, and (3) this bill is enacted after SB 405, in which case Section 52378 of the Education Code, as amended by Section 4 of this bill, shall remain operative only until the operative date of SB 405, at which time Section 4.5 of this bill shall become operative.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 8. (a) Of the funds appropriated in Item 6110-266-0001 of Section 2.00 of the Budget Act of 2007, up to one million five hundred thousand dollars (\$1,500,000) may be used to provide funding to county offices of education for the oversight activities required pursuant to subparagraph (E) of paragraph (2) of subdivision (c) of Section 1240 of the Education Code. The statewide organization that represents county superintendents of schools shall recommend a methodology for allocation of these funds to the Superintendent of Public Instruction by October 1, 2007. The Superintendent of Public Instruction may modify the methodology, subject to approval by the Department of Finance and 30-day notification to the appropriate policy and fiscal committees of the Legislature. Funds shall not be allocated prior to the expiration of the 30-day notification period.

(b) It is the intent of the Legislature that the allocation method specified in subdivision (a) be applied for the 2007-08 fiscal year and the determination of allocations for the 2008-09 fiscal year and each fiscal year thereafter be subject to the normal budget process.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide timely assistance to the pupils of the classes of 2006 and 2007 who have not passed one or both sections of the high school exit examination by the end of grade 12, it is necessary that this bill take effect immediately.

BILL NUMBER: SB 132 CHAPTERED
BILL TEXT

CHAPTER 730

FILED WITH SECRETARY OF STATE OCTOBER 14, 2007
APPROVED BY GOVERNOR OCTOBER 14, 2007
PASSED THE SENATE SEPTEMBER 10, 2007
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AMENDED IN ASSEMBLY JULY 17, 2007
AMENDED IN ASSEMBLY JUNE 26, 2007
AMENDED IN ASSEMBLY MAY 29, 2007
AMENDED IN SENATE APRIL 18, 2007
AMENDED IN SENATE MARCH 26, 2007

INTRODUCED BY Committee on Education (Senators Scott (Chair),
Alquist, Denham, Maldonado, Padilla, Romero, Simitian, Torlakson, and
Wyland)

JANUARY 24, 2007

An act to amend Sections 1242.5, 5017, 8222, 8223, 8236, 8265, 8279.1, 17072.11, 17608, 18444, 18830, 35035, 44258.9, 44269, 44270, 44300, 44302, 44386, 44506, 44868, 44869, 48900, 49430.7, 49452.8, 52055.625, 52302, 52302.2, 52321, 52379, 54022, 54023, 54026, 56351.5, 60242, 60640, and 99237 of, to add Sections 41544 and 52325 to, to repeal Section 8451 of, and to repeal Article 5.6 (commencing with Section 44305) of Chapter 2 of Part 25 of Division 3 of Title 2 of, the Education Code, relating to education.

SEC. 33. Section 52379 of the Education Code is amended to read:

52379. (a) Funds appropriated in the annual Budget Act for the purposes of this chapter shall be allocated to school districts based on an equal amount per pupil enrolled in the district in the prior fiscal year, based on the fall California Basic Educational Data System (CBEDS) enrollment data, in grades 7 to 12, inclusive, with the following minimum-grant exceptions:

(1) Five thousand dollars (\$5,000) for each schoolsite that has 100 or fewer pupils enrolled in any of grades 7 to 12, inclusive.

(2) Ten thousand dollars (\$10,000) for each schoolsite that has at least 101, but not more than 200, pupils enrolled in any of grades 7 to 12, inclusive.

(3) Thirty thousand dollars (\$30,000) or an amount per pupil enrolled, whichever is greater, for each schoolsite with more than 200 pupils enrolled in any of grades 7 to 12, inclusive.

(b) Funds allocated pursuant to this section shall supplement, and not supplant, expenditures made by a school district for school counseling programs.

(c) For purposes of this section, a charter school is not eligible to receive a minimum grant but instead shall receive an amount per pupil enrolled in grades 7 to 12, inclusive.

(d) Funds appropriated in the annual Budget Act for the purposes of this chapter shall be used to provide supplemental counseling services delivered by personnel who hold a valid pupil personnel services credential.



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5 CA ADC § 1204.5

5 CCR § 1204.5

Cal. Admin. Code tit. 5, § 1204.5

BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS
TITLE 5. EDUCATION
DIVISION 1. CALIFORNIA DEPARTMENT OF EDUCATION
CHAPTER 2. PUPILS
SUBCHAPTER 6. CALIFORNIA HIGH SCHOOL EXIT EXAMINATION
ARTICLE 2. HIGH SCHOOL EXIT EXAMINATION ADMINISTRATION
This database is current through 9/19/08, Register 2008, No. 38

§ 1204.5. Grades 11 and 12 and Adult Student Testing Dates.

(a) School districts shall provide eligible pupils in grade 11 at least two opportunities per school year to take the section(s) of the examination not yet passed. Eligible pupils in grade 11 may take the section(s) of the examination not yet passed up to two times per school year and may take examination in successive administrations.

(b) School districts shall provide eligible pupils in grade 12 at least three opportunities per school year to take the section(s) of the examination not yet passed. Eligible pupils in grade 12 may take the section(s) of the examination not yet passed up to three times per school year and may take the examination in successive administrations.

(c) School districts shall provide eligible adult students at least three opportunities per school year to take the section(s) of the examination not yet passed. Eligible adult students may take the section(s) of the examination not yet passed up to three times per school year and may take the examination in successive administrations.

(d) Eligible pupils in grades 11 and 12 and eligible adult students should be offered appropriate remediation or supplemental instruction before being retested.

Note: Authority cited: Section 33031, Education Code. Reference: Sections 37252, 37254 and 60851, Education Code.

HISTORY

1. New section filed 5-19-2004; operative 5-19-2004 pursuant to Government Code section 11343.4(c) (Register 2004, No. 21).
2. Amendment of section heading, section and Note filed 8-16-2005; operative 8-16-2005 pursuant to Government Code section 11343.4 (Register 2005, No. 33).
3. Amendment of section heading and section filed 3-16-2006 as an emergency; operative 3-16-2006 (Register 2006, No. 11). A Certificate of Compliance must be transmitted to OAL by 7-14-2006 or emergency language will be repealed by operation of law on the following day.

4. Certificate of Compliance as to 3-16-2006 order transmitted to OAL 6-12-2006 and filed 7-25-2006 (Register 2006, No. 30).

5. Amendment of section and Note filed 12-20-2007; operative 12-20-2007 pursuant to Government Code section 11343.4 (Register 2007, No. 51).

5 CCR § 1204.5, 5 CA ADC § 1204.5
1CAC

5 CA ADC § 1204.5

END OF DOCUMENT

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Arthur Palkowits, County of San Diego (Mail)	New Test Claim RE: High School Exit Exams	NP/HP/File
John Chiang, California State Controller (Mail)	CSM 4181-A Graduation Requirements RE: Comments on Revised Final Staff Analysis	PH/NP/HP/File (E-Mail Copy Already Distributed)
Nicolas Scheweizer, Department of Finance (Mail)	CSM 4181-A Graduation Requirements RE: Requests for Time Extension	PH/NP/HP/File

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DEPARTMENT OF
FINANCE
OFFICE OF THE DIRECTOR

ARNOLD SCHWARZENEGGER, GOVERNOR
STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

November 21, 2008

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

RECEIVED
DEC 11 2008
COMMISSION ON
STATE MANDATES

Dear Ms. Higashi:

As requested in your letter of October 22, 2008, the Department of Finance (Finance) has reviewed the test claim submitted by the San Jose Unified School District (claimant) for the High School Exit Examination II (08-TC-02) asking the Commission on State Mandates (Commission) to determine whether specified costs incurred under Chapter 526, Statutes of 2007 (AB 347), and Chapter 730, Statutes of 2007 (SB 132), are reimbursable state mandated costs.

Commencing with Exhibit A of the test claim, the claimant has identified the following new district duties, which asserts are reimbursable state mandates:

- Providing intensive instruction services to students who have not passed one or both parts of the California High School Exit Exam (CAHSEE) by the end of grade 12 for two additional years following the completion of grade 12. These services may include a variety of instructional strategies as noted in Education Code Section 37254 to meet the needs of the students.
- Ensuring each eligible student receives an appropriate diagnostic assessment.
- Notifying eligible students in writing of the availability of CAHSEE intensive instruction and services, and posting notification on the school site and district's website.
- Providing annual reports to the Superintendent of Public Instruction (SPI) relating to CAHSEE intensive instruction and services, and notification.

Finance believes that the portion of the test claim related to AB 347 violates Government Code Section 17551 and should not be considered by the Commission. Section 17551(c) states that "Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later." AB 347 was approved by the Governor and filed with the Secretary of State on October 12, 2007. According to Commission documents, the claimant submitted its test claim to the Commission on October 14, 2008—two days beyond what is allowed under Section 17551. Therefore, the Commission has no statutory authority to hear and decide upon the portions of the test claim relating to AB 347.

Finance believes that Education Code Sections 37254, 52378, 52379, and 52380, as amended by AB 347 and SB 132, do not impose a state-mandated new program or higher level of service because they are discretionary activities of the claimant. Our conclusion is based on the plain

language of the Education Code sections. Either by way of explicit language or by cross reference to those explicit citations, the statutes are clear that CAHSEE Intensive Instruction and Services Program, and Middle and High School Supplemental Counseling Program activities are required only if the claimant first *chooses* to receive state funding and participate in the programs. Quite simply, these are downstream requirements predicated on the claimant's initial decision to either receive state funding or forego it. Specifically, Education Code Section 37254, paragraph (d) states "As a condition of receiving funds pursuant to subdivision (c), the school district shall accomplish all of the following:" and the section continues by providing a list of requirements including the new activities identified by the claimant. Education Code Sections 52378 and 52380 include nearly identical language clearly stating that activities required under the program are conditions of receiving funding.

Finance concludes that the new activities identified by the claimant are clearly discretionary. The courts have held that costs to a local entity resulting from an action undertaken at the option of the local entity are not reimbursable as "costs mandated by the state". Specifically, in City of Merced v. State of California, 153 Cal. App. 3d 777 (1984), the court said:

"We agree that the Legislature intended for payment of goodwill to be discretionary. ...whether a city or county decides to exercise eminent domain is, essentially, an option of the city or county, rather than a mandate of the state. The fundamental concept is that the city or county is not required to exercise eminent domain. If, however, the power of eminent domain is exercised, then the city will be required to pay for loss of goodwill. Thus, payment for loss of goodwill is not a state-mandated cost."

In County of Contra Costa v State of California, 177 Cal App. 3d 62,79 (1986) the court affirmed the City of Merced decision. Based on these court cases, Finance believes that the provisions of AB 347 and SB 132 simply make an optional program available to local educational agencies (LEAs), the costs of which are not reimbursable because they are not costs mandated by the state.

In the unlikely event that the Commission hears and determines that these activities do constitute a new program or higher level of service, Finance believes that the Commission will not find costs mandated by the state, as described in Government Code Section 17556(e), because funding has been provided in every Budget Act since 2005 for the CAHSEE Intensive Instruction and Services Program and in every Budget Act since 2006 for the Middle and High School Supplemental Counseling Program. The claimant has applied for, and received funding under, both programs. For example, the claimant received \$304,066 in CAHSEE Intensive Instruction and Services Program funding and \$1,008,269 in Middle and High School Supplemental Counseling Program funding in the 2007-08 school year—the most recent, completed school year. The claimant has failed to list these offsetting fund sources for the alleged new activities identified in the test claim.

Another offsetting fund source not mentioned by the claimant is revenue limits. The combination of Chapter 1406, Statutes 1976, and Propositions 13, 98, and 4 established a revenue limit system that provides LEAs general-purpose education funding made up of a combination of local property taxes and state General Fund aid. This money should be used

Ms. Paula Higashi
November 21, 2008
Page 3

for, and is properly available to, offset any actual increased costs of the claimant. If post-grade 12 student courses increase due to AB 347, it is likely that LEAs would establish remedial math and English language arts courses to meet that demand. In turn, greater attendance by post-grade 12 students would generate additional revenue limit funding for LEAs.

As required by the Commission's regulations, a "Proof of Service" has been enclosed indicating that the parties included on the mailing list which accompanied your October 22, 2008 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Ryan Storm, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,



JEANNIE OROPEZA
Program Budget Manager

Attachment

Attachment A

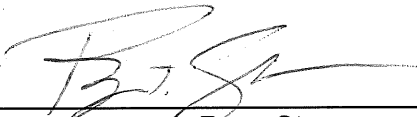
DECLARATION OF RYAN STORM
DEPARTMENT OF FINANCE
CLAIM NO. CSM-08-TC-02

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter 526 and 132, Statutes of 2007, (AB 347 and SB 132, Nava and) sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

December 4, 2008

at Sacramento, CA



Ryan Storm

PROOF OF SERVICE

Test Claim Name: High School Exit Examination II
Test Claim Number: CSM-08-TC-02

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 915 L Street, 7 Floor, Sacramento, CA 95814.

On December 4, 2008, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on 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 915 L Street, 7 Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

E-8
Department of Education
Fiscal Policy Division
Attention: Amy Tang-Paterno
1430 N Street
Sacramento, CA 95814

E-08
State Board of Education
Attention Bill Lucia, Executive Director
1430 N Street
Sacramento, CA 95814

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

Mr. Patrick Day
San Jose Unified School District
855 Lenzen Ave.
San Jose, CA 95126-2736

California Teachers Association
Attention: Steve DePue
2921 Greenwood Road
Greenwood, CA 95635

E-08

Ms. Carol Bingham
California Department of Education
Fiscal Policy Division
1430 N Street, Suite 5602

B-08

Mr. Jim Spano
State Controller's Office
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 894059
Temecula, CA 92589

Mr. Steve Smith
Steve Smith Enterprises, Inc.
2200 Sunrise Blvd., Suite 220
Gold River, CA 95670

Ms. Beth Hunter
Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

B-29

Ms. Marianne O'Malley
Legislative Analyst's Office
925 L Street, Suite 1000
Sacramento, CA 95814

Mr. Joe Rombold
School Innovations & Advocacy
11130 Sun Center Drive, Suite 100
Rancho Cordova, CA 95670

A-15

Ms. Jeannie Oropeza
Department of Finance
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

A-15

Ms. Carla Casteneda
Department of Finance
915 L Street, 11th Floor
Sacramento, CA 95814

Mr. Robert Miyashiro
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

A-15

Ms. Donna Ferebee
Department of Finance
915 L Street, 11th Floor
Sacramento, CA 95814

Mr. David E. Scribner
Scribner & Smith, Inc.
2200 Sunrise Blvd., Suite 220
Gold River, CA 95670

A-15

Ms. Susan Geanacou
Department of Finance
915 L Street, Suite 1190
Sacramento, CA 95814

B-08

Ms. Ginny Brummels
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. David Cichella
California School Management Group
3130-C Inland Empire Blvd.
Ontario, CA 91764

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd., #307
Sacramento, CA 95842

B-29

Mr. Jim Soland
Legislative Analyst's Office
925 L Street, Suite 1000
Sacramento, CA 95814

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

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 December 4, 2008 at Sacramento, California.



Annette Waite

COMMISSION ON STATE MANDATES

980 NINTH STREET, SUITE 300
SACRAMENTO, CA 95814
PHONE: (916) 323-3562
FAX: (916) 445-0278
E-mail: csminfo@csm.ca.gov



March 20, 2013

Ms. Veronica Lanto
San Jose Unified School District
855 Lenzen Avenue
San Jose, CA 95126-2736

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

Re: **Draft Staff Analysis, Schedule for Comments, and Notice of Hearing**
High School Exit Exam II, 08-TC-02
Education Code Sections 37254 et al.
San Jose Unified School District, Claimant

Dear Ms. Lanto:

The draft staff analysis for the above-named matter is enclosed for your review and comment.

Written Comments

Any party or interested person may file written comments on the draft staff analysis by **April 10, 2013**. You are advised that comments filed with the Commission are required to be simultaneously served on the other interested parties on the mailing list, and to be accompanied by a proof of service. However, this requirement may also be satisfied by electronically filing your documents. Please see <http://www.csm.ca.gov/dropbox.shtml> on the Commission's website for instructions on electronic filing. (Cal. Code Regs., tit. 2, § 1181.2.)

If you would like to request an extension of time to file comments, please refer to section 1183.01(c)(1) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, May 24, 2013**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The final staff analysis will be issued on or about May 10, 2013. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1183.01(c)(2) of the Commission's regulations.

Please contact Eric Feller at (916) 323-3562 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey", written over a horizontal line.

Heather Halsey
Executive Director

ITEM _____
TEST CLAIM
DRAFT STAFF ANALYSIS
AND
PROPOSED STATEMENT OF DECISION

Education Code Sections 37254, 52378, 52379, 52380
Statutes 2007, Chapter 526 and Statutes 2007, Chapter 730
California Code of Regulations, Title 5, Section 1204.5

Register 2004, No. 21, eff. May 19, 2004; Register 2005, No. 33, eff. Aug. 16, 2005; Register
2006, No. 11, eff. Mar. 16, 2006; and Register 2007, No. 51, eff. Dec. 20, 1997

High School Exit Exam II

08-TC-02

San Jose Unified School District, Claimant

EXECUTIVE SUMMARY

Attached is the draft proposed statement of decision for this matter. This executive summary and draft proposed statement of decision also functions as the draft staff analysis, as required by section 1183.07 of the Commission on State Mandates' (Commission) regulations.

Overview

The test claim seeks reimbursement for activities related to the California High School Exit Examination (CAHSEE), and related counseling programs to assist pupils in passing the CAHSEE. These counseling programs are the Intensive Instruction and Services Program and the Middle and High School Supplemental Counseling Program. The claimant has also pled a regulation that addresses the administration of the CAHSEE to 11th and 12th grade pupils and adult students.

CAHSEE was initially enacted in 1999 for the following reasons:

In March 1999, the California Legislature found that “[l]ocal proficiency standards” set by individual school districts were “generally set below a high school level and [were] not consistent with state adopted academic content standards.” (Stats.1999, 1st Ex.Sess.1999–2000, ch. 1, § 1(a).) The Legislature concluded that “[i]n order to significantly improve pupil achievement in high school and to ensure that pupils who graduate from high school can demonstrate grade level competency in reading, writing, and mathematics, the state must set higher standards for high school graduation.” (Stats.1999, 1st Ex.Sess.1999–2000, ch. 1, § 1(b).)

In order to further this goal, the Legislature directed that defendant “Superintendent of Public Instruction, with the approval of [defendant] State Board of Education, shall develop a high school exit examination in English-language arts and mathematics in accordance with ... statewide academically rigorous content standards adopted by [defendant] State Board of Education....” (Ed.Code, § 60850, subd. (a).) The examination developed under that mandate has come to be known as the CAHSEE. The CAHSEE is administered to all public high school students starting in grade 10, and each student is permitted to continue to take the CAHSEE at each subsequent administration, several times a year, until he or she has passed both sections. (§ 60851, subd. (b).) School districts are required to offer “supplemental instructional programs for pupils ... who do not demonstrate sufficient progress toward passing the [CAHSEE].” (§ 37252, subd. (a); see also § 60851, subd. (f).)¹

The 2007 test claim statute (Stats. 2007, ch. 526) amended Education Code sections 37254, 52378 and 52380. The amendment implements a settlement resulting from the *Valenzuela v. O’Connell* litigation by ensuring that pupils who fail to pass the CAHSEE by the end of 12th grade have remedial assistance. The definition of “intensive instruction and services” in section 37254(c) was amended by the test claim statute to add the following italicized language:

Intensive instruction and services may include, but are not limited to, all of the following:

- (A) Individual or small group instruction.
- (B) The hiring of additional teachers.
- (C) Purchasing, scoring, and reviewing diagnostic assessments.
- (D) Counseling.
- (E) Designing instruction to meet specific needs of eligible pupils.
- (F) Appropriate teacher training to meet the needs of eligible pupils.
- (G) *Instruction in English-language arts or mathematics, or both, that eligible pupils need to pass those parts of the high school exit examination not yet passed. A school district may employ different intensive instruction and services strategies more aligned to the needs and circumstances of pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 as compared to grade 12 pupils with similar needs in a comprehensive high school of the district.*
- (H) *The provision of instruction and services by a public or nonpublic entity, as determined by the local educational agency.*

Education Code section 52379 (Stats. 2007, ch. 730) was amended as part of an annual ‘clean-up’ bill to correct wording in the Middle and High School Supplemental Counseling Program to

¹ *O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452.

clarify that school sites with an enrollment in grades 7 through 12 of 101 through and including 200 pupils receive a minimum grant of \$10,000.

Section 1204.5 of the title 5 regulations was amended effective December 20, 2007 to clarify the number of times pupils and adult students may take the CAHSEE in each grade and to permit grade 11 pupils to take the CAHSEE in successive administrations.

The claimant seeks reimbursement to:

- Offer pupils who have failed one or both parts of CAHSEE by the end of 12th grade the opportunity to receive intensive support and assistance for two years following the completion of 12th grade. A school district may employ different intensive instruction and services strategies aligned to the needs of the pupil, and intensive instruction and services may be provided on Saturdays, evenings, or at a time and location deemed appropriate by the school district. Intensive instruction and services may include individual or small group instruction; the hiring and training of teachers; purchasing, scoring, and reviewing diagnostic assessments; and the provision of instruction and services by a public or nonpublic entity, as determined by the school district.
- Notify pupils in writing that intensive services are available to eligible pupils for two years following 12th grade. Notice must also be posted in the school site office, district office, and on the school district's website.
- Ensure that each eligible pupil receives an appropriate diagnostic assessment to identify areas of need.
- Submit an annual report to the Superintendent of Public Instruction (SPI) relating to the provision of intensive instruction and services provided.

Procedural History

The *High School Exit Exam II* test claim was filed by the San Jose Unified School District on October 14, 2008, establishing a potential period of reimbursement beginning on July 1, 2007.² The Department of Finance filed comments on the test claim on December 4, 2008.

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local government to be eligible for reimbursement, one or more similarly situated local agencies or school districts must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim. The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In

² Government Code section 17557(e).

making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.³

Claims

Subject	Description	Staff Recommendation
<p>Education Code sections 37254, 52378 and 52380 (Stats. 2007, ch. 526).</p> <p>California Code of Regulations, title 5, section 1204.5 (Register 2004, No. 21, eff. May 19, 2004; Register 2005, No. 33, eff. Aug. 16, 2005), Register 2006, No. 11, eff. Mar. 16, 2006).</p>	<p>The claimant has pled these code sections as amended by AB 347 (Stats. 2007, ch. 526), which was an urgency bill that took effect on October 12, 2007, the date it was chaptered.</p> <p>The test claim also concerns section 1204.5 of title 5 as adopted in 2004 and amended in 2005 and 2006.</p>	<p><i>Deny.</i> The Commission does not have jurisdiction over Education Code sections 37254, 52378 and 52380, as amended by Statutes 2007, chapter 526, or section 1204.5 of the title 5 regulations, as added and amended in 2004, 2005, and 2006 because the test claim was filed on October 14, 2008; more than 12 months following the effective date of those test claim statutes and regulations. (Gov. Code §17551(c).)</p>
<p>Education Code section 52379 (Stats. 2007, Ch. 730)</p>	<p>This section was amended as part of an annual ‘clean-up’ bill to specify that school sites with an enrollment in grades 7 through 12 of 101 through and including 200 pupils receive a minimum grant of \$10,000.</p>	<p><i>Deny.</i> This amendment imposes no requirements on school districts, and, thus, does not constitute a state-mandated program.</p>
<p>California Code of Regulations, title 5, section 1204.5. (Register 2007, No. 51, eff. Dec. 20, 2007.)</p>	<p>This regulation was amended to clarify the number of times pupils and adult students may take the CAHSEE in each grade and to permit grade 11 pupils to take the CAHSEE in successive administrations.</p>	<p><i>Deny.</i> This amendment does not mandate a new program or higher level of service on school districts. There is no increase in the number of times per year pupils or adult students may take the CAHSEE and no indication that successive administration of the test for grade 11 pupils, as provided in subdivision (d), imposes a higher level of service on a school district.</p>

³ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802.

Analysis

- 1. The Commission does not have jurisdiction to determine whether Education Code section 37254, 52378, and 52380, as amended by Statutes 2007, chapter 526, or section 1204.5 of the title 5 regulations, as adopted in 2004 and amended in 2005 and 2006, constitute a reimbursable state-mandated program.**

The claimant filed this test claim on October 14, 2008. Statutes 2007, chapter 526, which amended Education Code sections 37254, 52378, and 52380, became effective October 12, 2007. Government Code section 17551(c) states the following:

Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

The test claim was filed on October 14, 2008. There is no evidence in the record that the claimant first incurred increased costs as a result of the amendments made by Statutes 2007, chapter 526 within the 12 months of filing the test claim. Thus, because the test claim was filed more than 12 months after the effective date of Statutes 2007, chapter 526, the Commission does not have jurisdiction to make findings on Education Code sections 37254, 52378, and 52380 as amended by Statutes 2007, chapter 526.

The regulations result in a similar conclusion. Although the claimant does not state which version of section 1204.5 of the title 5 regulations is being pled in the test claim, the history of section 1204.5 shows that it was adopted in 2004 (Register 2004, No. 21, eff. May 19, 2004) and amended three times before the claim was filed: on August 16, 2005 (Register 2005, No. 33, eff. Aug. 16, 2005), March 16, 2006 (Register 2006, No. 11, eff. Mar. 16, 2006), and December 20, 2007 (Register 2007, No. 51, eff. Dec. 20, 1997). The Commission has jurisdiction only over the amendment to section 1204.5 effective December 20, 2007 (Register 2007, No. 51), which became effective within 12 months of the filing of this test claim.

- 2. Education Code section 52379, as amended by Statutes 2007, chapter 730 and section 1204.5 of the title 5 regulation, as amended in 2007, do not impose a state-mandated new program or higher level of service on school districts.**

Education Code section 52379 (Stats. 2007, ch. 730) was amended as part of an annual ‘clean-up’ bill to correct wording in the Middle and High School Supplemental Counseling Program to specify that school sites with an enrollment in grades 7 through 12 of 101 through and including 200 pupils receive a minimum grant of \$10,000. The amendment describes how funding is allocated for the counseling program, but imposes no requirements on a school district. Thus, staff finds that Education Code 52379 (Stats. 2007, ch. 730) does not impose a state-mandated program on school districts.

Section 1204.5 of the title 5 regulations was amended operative December 20, 2007 to clarify the number of times pupils may take the CAHSEE in each grade and to permit grade 11 pupils to take the CAHSEE in successive administrations. The amendments do not increase the number of times per year pupils may take the CAHSEE. Both before and after the 2007 amendment, eligible pupils in grade 11 may take the CAHSEE up to two times per year, eligible pupils in

grade 12 may take the CAHSEE up to three times per year, and eligible adult students may take the CAHSEE up to three times per year. There is nothing to indicate that allowing successive administrations for grade 11 pupils in subdivision (d) imposes a higher level of service on a school district beyond that provided under prior law. Because it imposes no new requirements on school districts, staff finds that California Code of Regulations, title 5, section 1204.5 (Register 2007, No. 51, operative and effective on Dec. 20, 2007) does not impose a state mandated new program or higher level of service.

Conclusion and Staff Recommendation

Staff recommends that the Commission adopt the proposed statement of decision to deny the test claim.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 37254, 52378,
52379, 52380

Statutes 2007, Chapter 526 and
Statutes 2007, Chapter 730.

California Code of Regulations, Title 5,
Section 1204.5

Register 2004, No. 21, eff. May 19, 2004;
Register 2005, No. 33, eff. Aug. 16, 2005;
Register 2006, No. 11, eff. Mar. 16, 2006; and
Register 2007, No. 51, eff. Dec. 20, 1997

Filed on October 14, 2008

By San Diego Unified School District,
Claimant.

Case No.: 08-TC-02

High School Exit Exam II

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 May 24, 2013)

PROPOSED STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on May 24, 2013. [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 sections 17500 et seq., and related case law.

The Commission [adopted/modified] the proposed statement of decision to [approve/deny] the test claim at the hearing by a vote of [vote count will be included in the final statement of decision].

Summary of the Findings

The Commission finds that the claimant did not file this test claim within the statute of limitations provided in Government Code section 17551(c) with respect to Education Code sections 37254, 52378, and 52380, as amended by AB 347 (Stats. 2007, ch. 526) and section 1204.5 of the title 5 regulations as adopted in 2004, and amended in 2005 and 2006. Therefore, the Commission does not have jurisdiction to make findings on these sections.

The Commission also finds that Education Code section 52379, as amended by Statutes 2007, chapter 730, and section 1204.5 of the title 5 regulations, as amended in 2007 (Register 2007,

No. 51) do not impose a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution.

Accordingly, the Commission denies this test claim.

COMMISSION FINDINGS

I. Chronology

- 10/14/08 Claimant, San Jose Unified School District, filed the test claim with the Commission.⁴
- 10/22/08 Commission staff issued notice of complete test claim and schedule for comments.
- 12/04/08 Department of Finance (Finance) filed comments on the test claim.

II. Background

This test claim addresses activities related to the California High School Exit Examination (CAHSEE) and the Intensive Instruction and Services Program and the Middle and High School Supplemental Counseling Program, which assist pupils to pass the California High School Exit Examination.

A. The High School Exit Exam

The requirement to administer the CAHSEE was initially enacted in 1999. The background for the examination was summarized by the court in 2006 in *O'Connell v. Superior Court* as follows:

In March 1999, the California Legislature found that “[l]ocal proficiency standards” set by individual school districts were “generally set below a high school level and [were] not consistent with state adopted academic content standards.” (Stats.1999, 1st Ex.Sess.1999–2000, ch. 1, § 1(a).) The Legislature concluded that “[i]n order to significantly improve pupil achievement in high school and to ensure that pupils who graduate from high school can demonstrate grade level competency in reading, writing, and mathematics, the state must set higher standards for high school graduation.” (Stats.1999, 1st Ex.Sess.1999–2000, ch. 1, § 1(b).)

In order to further this goal, the Legislature directed that defendant “Superintendent of Public Instruction, with the approval of [defendant] State Board of Education, shall develop a high school exit examination in English-language arts and mathematics in accordance with ... statewide academically rigorous content standards adopted by [defendant] State Board of Education....” (Ed.Code, § 60850, subd. (a).) The examination developed under that mandate has come to be known as the CAHSEE. The CAHSEE is administered to all public high school students starting in grade 10, and each student is permitted to continue to take the CAHSEE at each subsequent administration, several times a

⁴ The potential period of reimbursement begins on July 1, 2007, the start of the 2007-2008 fiscal year. See Government Code section 17557(e).

year, until he or she has passed both sections. (§ 60851, subd. (b).) School districts are required to offer “supplemental instructional programs for pupils ... who do not demonstrate sufficient progress toward passing the [CAHSEE].” (§ 37252, subd. (a); see also § 60851, subd. (f).)⁵

The CAHSEE has two parts: English-language arts and mathematics through algebra I. By law, each part is aligned with California’s academic content standards adopted by the State Board of Education (SBE). All eligible pupils⁶ in California public schools must satisfy the CAHSEE requirement, as well as all other state and local graduation requirements, to receive a high school diploma.

The State Budget Act provides funds to administer the CAHSEE. Because of the mandate finding in the first *High School Exit Exam* test claim (00-TC-06, discussed below), every fiscal year since 2004-2005, the State Budget Act has included the following language with respect to the CAHSEE appropriation: “Local education agencies accepting funding from these schedules shall reduce their estimated and actual mandate reimbursement claims by the amount of funding provided to them from these schedules.”⁷

B. Preexisting Counseling Programs to Help Pupils Pass the CAHSEE

The 1999 legislation that established the CAHSEE also required school districts to offer summer school instructional programs to pupils who do not demonstrate sufficient progress toward passing the CAHSEE.⁸ Later legislation enacted in 1999 expanded the requirement of “summer school” to authorize school districts to offer the instructional programs after school, Saturdays, or during intersession, or in any combination of summer, after school, Saturdays, or intersession instruction, as long as they were in addition to the regular schoolday.⁹ In 2000, this program’s name was changed from the Summer School Instructional Program to the Supplemental Instructional Program and authorized instructional programs to also be offered before school and for those pupils who were enrolled in grade 12 during the previous year.¹⁰ The bill also altered

⁵ *O’Connell v. Superior Court* (2006) 141 Cal.App.4th 1452.

⁶ An eligible pupil is “a person enrolled in a California public school in grade 10, 11, or 12, including those pupils placed in a nonpublic school through the individualized education program (IEP) process pursuant to Education Code section 56365, who has not passed both the English-language arts section and the mathematics section of the CAHSEE.” (Cal. Code Regs, tit. 5, § 1200, subd. (e)).

⁷ Statutes 2004, chapter 208, Item 6110-113-0001, Provision 8; Statutes 2005, chapters 38, 39, Item 6110-113-001, Provision 8; Statutes 2006, chapters 47, 48, Item 6110-113-001, Provision 6; Statutes 2007, chapters 171 & 172, Provision 7; Statutes 2008, chapters 268, 269, Item 6110-113-001, Provision 7; Statutes 2009, chapter 1 (4th Ex. Sess), Item 6110-113-001, Provision 7. Statutes 2010, chapter 712, Item 6110-113-0001, Provision 7. Statutes 2011, chapter 33, Item 6110-113-0001, Provision 7.

⁸ Education Code section 37252 (Stats. 1999-2000x1, ch. 1).

⁹ Education Code section 37252 (d) (Stats. 1999, ch. 78).

¹⁰ Education Code section 37252 (c) and (d) (Stats. 2000, ch. 72).

the funding for supplemental instruction from an average daily attendance basis to a calculation based on hours of supplemental instruction.

In 2005, school districts were authorized to use the Supplemental Instructional Program funds to provide intensive instruction and services to pupils who failed one or both parts of the CAHSEE. Intensive instruction and services was defined to include, but not be limited to: individual or small group instruction; hiring additional teachers; purchasing, scoring, and reviewing diagnostic assessments; counseling; designing instruction to meet specific needs of eligible pupils; and appropriate teacher training to meet the needs of eligible pupils.¹¹ The Superintendent of Public Instruction was to rank schools and give highest priority to those with the highest percentage of pupils who had failed one or both parts of the CAHSEE, and then apportion six hundred dollars (\$600) per eligible pupil to school districts on behalf of those schools identified until the funds were exhausted.¹² In 2006, this apportionment was changed to a per-pupil rate for the number of eligible pupils in grade 12, with a maximum per pupil rate of \$500, increased annually as specified.¹³

The 2006 legislation enacted the Middle and High School Supplemental Counseling Program “for the purpose of providing additional counseling services to pupils in grades 7 to 12, inclusive.”¹⁴ This broader counseling program was added to the preexisting counseling program for pupils not demonstrating sufficient progress toward passing the CAHSEE. The legislation requires schools, as a condition of receiving funds, to:

[I]dentify pupils who are at risk of not graduating with the rest of their class, are not earning credits at a rate that will enable them to pass the high school exit examination, or do not have sufficient training to allow them to fully engage in their chosen career.”¹⁵

The schools are required to take specified measures to help these identified pupils graduate from high school.

C. The Test Claim Statutes and Regulation

Statutes 2007, chapter 526 amended the CAHSEE Intensive Instruction and Services Program (§ 37254) and Middle and High School Supplemental Counseling Program (§§ 52378 & 52380) requirements. These amendments revise the definition of “eligible pupil” to include pupils who have not satisfied the requirement to pass the high school exit examination in order to graduate from high school and have failed one or both parts of the examination *by the end of grade 12*. This statute also revised the funding calculation and changed the definition of “intensive instruction and services” to add the following italicized language to Education Code section 37254(c):

¹¹ Education Code section 37254 (d) (Stats. 2005, ch. 234).

¹² Education Code section 37254 (c) (Stats. 2005, ch. 234).

¹³ Education Code section 37254 (b) & (c) (Stats. 2006, ch. 79).

¹⁴ Education Code section 52378.

¹⁵ Education Code section 52378 (b) (Stats. 2006, ch. 79).

Intensive instruction and services may include, but are not limited to, all of the following:

- (A) Individual or small group instruction.
- (B) The hiring of additional teachers.
- (C) Purchasing, scoring, and reviewing diagnostic assessments.
- (D) Counseling.
- (E) Designing instruction to meet specific needs of eligible pupils.
- (F) Appropriate teacher training to meet the needs of eligible pupils.

(G) Instruction in English-language arts or mathematics, or both, that eligible pupils need to pass those parts of the high school exit examination not yet passed. A school district may employ different intensive instruction and services strategies more aligned to the needs and circumstances of pupils who have not passed one or both parts of the high school exit examination by the end of grade 12 as compared to grade 12 pupils with similar needs in a comprehensive high school of the district.

(H) The provision of instruction and services by a public or nonpublic entity, as determined by the local educational agency.

Statutes 2007, chapter 526 also requires schools to ensure that pupils who have not passed one or both parts of the CAHSEE are informed of, and have available, services in time for the pupils to avail themselves of those services each term for two consecutive academic years beyond grade 12, and imposes other notification requirements, including the posting of notices in 10th, 11th, and 12th grade classrooms regarding pupil eligibility for the CAHSEE remedial services available beyond 12th grade. Additionally, it required schools to ensure that eligible pupils and English learners have the opportunity to receive intensive instruction and services for up to two consecutive academic years after completion of grade 12 or until the pupil has passed both parts of the high school exit examination, whichever comes first. Finally, it also modified requirements for annual reporting to the Superintendent of Public Instruction (SPI).

The Senate Floor Analysis of Statutes 2007, chapter 526 described it as follows:

This bill implements a proposed settlement agreement in the *Valenzuela v. O'Connell* lawsuit by placing conditions on the receipt of funding that requires school districts to provide intensive instruction and services to pupils who have not passed the high school exit examination by the end of twelfth grade. [¶]...[¶]

A lawsuit filed by plaintiffs (*Valenzuela v. O'Connell*) contends that pupils that have otherwise met graduation requirements but have not received a diploma due to a failure to pass one or both portions of the CAHSEE have been disadvantaged by an unequal education system that did not adequately teach the materials on the exam. While the suit has not halted the implementation of the CAHSEE as a graduation requirement, the Court of Appeals has recommended that the parties agree to a means of providing equal access and adequate remedial assistance to

students that have not passed the exam. The bill reflects an effort to settle the suit.¹⁶

The *Valenzuela* court concluded, among other things, that “the trial court's determination that plaintiffs were likely to prevail on their primary equal protection claim was supported by substantial evidence and legally proper.”¹⁷ Statutes 2007, chapter 526 implements a resolution to the *Valenzuela* litigation by ensuring that pupils who fail to pass the exit examination have remedial assistance.

Another test claim statute, Statutes 2007, chapter 730, amended Education Code section 52379 as part of an “annual Education ‘clean-up’ bill that makes various non-controversial revisions to statute.”¹⁸ The amendment to section 52379 “[c]orrects wording in the Middle and High School Supplemental Counseling Program to specify that school sites with an enrollment in grades 7 through 12 of 101 through and including 200 pupils receive a minimum grant of \$10,000.”¹⁹

The CAHSEE regulations are in section 1200 et seq. of title 5 of the California Code of Regulations. Claimant pled section 1204.5, which was amended effective December 20, 2007 (Register 2007, No. 51) to clarify the number of times pupils and adult students may take the CAHSEE in each grade and to permit grade 11 pupils to take the CAHSEE in successive administrations.²⁰

D. Prior Commission Decision on the *High School Exit Exam* Program

On March 25, 2004, the Commission issued a decision on the *High School Exit Exam* test claim (00-TC-06).²¹ The Commission found that the test claim legislation imposed a reimbursable state-mandated program on school districts, beginning on July 1, 2000, to perform the following activities:

- Adequate notice: notifying parents of *transfer* students who enroll after the first semester or quarter of the regular school term that, commencing with the 2003-04 school year, and each school year thereafter, each pupil completing 12th grade will be required to successfully pass the CAHSEE. The notification shall include, at a minimum, the date of

¹⁶ Senate Rules Committee, Third Reading Analysis of AB 347 (2007-2008 Reg. Sess.) as amended September 6, 2007, page 5.

¹⁷ *Valenzuela v. O'Connell* (2006) 141 Cal.App.4th 1452, 1457.

¹⁸ Senate Committee on Education, Analysis of SB 132 (2007-2008 Reg. Sess.) as amended March 26, 2007, page 5.

¹⁹ *Id.*, page 5.

²⁰ CDE, Initial Statement of Reasons, California High School Exit Exam Regulations, February 20, 2007, page 1.

²¹ The test claim consisted of Education Code Sections 60850, 60851, 60853, 60855 (Stats. 1999x, ch. 1; Stats. 1999, Ch. 135) and California Code of Regulations, Title 5, Sections 1200 – 1225 in effect March 2003.

the CAHSEE, the requirements for passing the CAHSEE, and the consequences of not passing the CAHSEE, and that passing the CAHSEE is a condition of graduation (Ed. Code, § 60850(e)(1) & (f)(1).);

- Documentation of adequate notice: maintaining documentation that the parent or guardian of each pupil received written notification of the CAHSEE (Cal. Code Regs., tit. 5, § 1208.);
- Determining English language skills: determining whether English-learning pupils possess sufficient English language skills at the time of the CAHSEE to be assessed with the CAHSEE (§ 1217.5);
- CAHSEE administration: administration of the CAHSEE on SPI-designated dates to all pupils in grade 10 beginning in the 2001-2002 school year, and subsequent administrations for students who do not pass until each section of the CAHSEE has been passed, and administration of the CAHSEE on SPI-designated dates to pupils in grade 9 only in the 2000-2001 school year who wish to take the CAHSEE (Ed. Code, § 60851(a)), except a teacher's time administering the CAHSEE is not a mandate. Administration is limited to the following activities specified in the regulations:
 - training a test administrator either by a test site or district coordinator as provided in the test publisher's manual. (§§ 1200(g) & 1210(b)(3));
 - allowing pupils to have additional time to complete the CAHSEE within the test security limits provided in section 1211, but only if additional time is not specified in the pupil's IEP, and only if this activity is performed by a non-teacher certificated employee, such as an employee holding a service credential. (§ 1215);
 - accurately identifying eligible pupils who take the CAHSEE through the use of photo-identification, positive recognition by the test administrator, or some equivalent means of identification (§ 1203);
 - maintaining a record of all pupils who participate in each test cycle of the CAHSEE, including the date each section was offered, the name and grade level of each pupil who took each section, and whether each pupil passed or did not pass the section or sections of the CAHSEE taken (§ 1205);
 - maintaining in each pupil's permanent record and entering in it prior to the subsequent test cycle the following: the date the pupil took each section of the CAHSEE, and whether or not the pupil passed each section of the CAHSEE (§ 1206);
 - designation by the district superintendent, on or before July 1 of each year, of a district employee as the CAHSEE district coordinator, and notifying the publisher of the CAHSEE of the identity and contact information of that individual (§ 1209);
 - for the district coordinator and superintendent, within seven days of completion of the district testing, to certify to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and

returned all test materials, answer documents, and other materials included as part of the CAHSEE in the manner required by the publisher (§ 1209); and

- designation annually by the district superintendent a CAHSEE test site coordinator for each test site (as defined) from among the employees of the school district who is to be available to the CAHSEE district coordinator to resolve issues that arise as a result of administration of the CAHSEE (§ 1210).
- Also, the CAHSEE district coordinator's duties²² listed in section 1209 and the CAHSEE test site coordinator's duties²³ listed in section 1210 (except for a teacher's time in administering the CAHSEE during the school day); and

²² These duties are: (1) responding to inquiries of the publisher, (2) determining district and school CAHSEE test material needs, (3) overseeing acquisition and distribution of the CAHSEE, (4) maintaining security over the CAHSEE using the procedures in section 1211, (5) overseeing administration of the CAHSEE, (6) overseeing collection and return of test material and test data to the publisher, (7) assisting the publisher in resolving discrepancies in the test information and materials, (8) ensuring all exams and materials are received from school test sites no later than the close of the school day on the school day following administration of the CAHSEE, (9) ensuring all exams and materials received from school test sites have been placed in a secure district location by the end of the day following administration of those tests, (10) ensuring that all exams and materials are inventoried, packaged, and labeled in accordance with instructions from the publisher and ensuring the materials are ready for pick-up by the publisher no more than five working days following administration of either section in the district, (11) ensuring that the CAHSEE and test materials are retained in a secure, locked location in the unopened boxes in which they were received from the publisher from the time they are received in the district until the time of delivery to the test sites; (12) within seven days of completion of the district testing, certifying with the Superintendent to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the CAHSEE in the manner required by the publisher.

²³ These duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test administrator(s) as provided in the test publisher's manual; (4) completing the Test Security Agreement and Test Security Affidavit prior to the receipt of test materials; (5) overseeing test security requirements, including collecting and filing all Test Security Affidavit forms from the test administrators and other site personnel involved with testing; (6) maintaining security over the examination and test data as required by section 1211; (7) overseeing the acquisition of examinations from the school district and the distribution of examinations to the test administrator(s); (8) overseeing the administration of the CAHSEE to eligible pupils... at the test site; (9) overseeing the collection and return of all testing materials to the CAHSEE district coordinator no later than the close of the school day on the school day following administration of the high school exit examination; (10) assisting the CAHSEE district coordinator and the test publisher in the resolution of any discrepancies between the number of examinations received from the CAHSEE district coordinator and the number of examinations collected for return to the CAHSEE district

- delivery of CAHSEE booklets to the school test site no more than two working days before the test is to be administered (§ 1212).
- Test security/cheating: Doing the following to maintain test security:
 - for CAHSEE test site coordinators to ensure that strict supervision is maintained over each pupil being administered the CAHSEE, both while in the testing room and during any breaks (§ 1211(a));
 - limiting access to the CAHSEE to pupils taking it and employees responsible for its administration (§ 1211(b));
 - having all CAHSEE district and test site coordinators sign the CAHSEE Test Security Agreement set forth in subdivision (d) of section 1211 of the title 5 regulations (§ 1211(c));
 - abiding by the Test Security Agreement by limiting access to persons in the district with a responsible, professional interest in the test's security. The Agreement also requires the coordinator to keep on file the names of persons having access to exam and test materials, and who are required to sign the CAHSEE Test Security Affidavit, and requires coordinators to keep the tests and test materials in a secure, locked location, limiting access to those responsible for test security, except on actual testing dates (§ 1211(d));
 - CAHSEE test site coordinators deliver the exams and test materials only to those actually administering the exam on the date of testing and only on execution of the CAHSEE Test Security Affidavit (§ 1211(e));
 - for persons with access to the CAHSEE (including test site coordinators and test administrators) to acknowledge the limited purpose of their access to the test by signing the CAHSEE Test Security Affidavit set forth in subdivision (g) (§ 1211(f));
 - CAHSEE district and test site coordinators control of inventory and use of appropriate inventory control forms to monitor and track test inventory (§ 1211(h));
 - being responsible for the security of the test materials delivered to the district until the materials have been inventoried, accounted for, and delivered to the common or private carrier designated by the publisher (§ 1211(i));

coordinator; (11) overseeing the collection of all pupil ...data as required to comply with sections 1204, 1205, and 1206 of the title 5 regulations; (12) within three working days of completion of site testing, certifying with the principal to the CAHSEE district coordinator that the test site has maintained the security and integrity of the examination, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the CAHSEE in the manner and as otherwise required by the publisher.

- providing secure transportation within the district for test materials once they have been delivered to the district (§ 1211(j)); and
- marking the test “invalid” and not scoring it for any pupil found to have cheated or assisted others in cheating, or who has compromised the security of the CAHSEE, and notifying each eligible pupil before administration of the CAHSEE of these consequences of cheating (§ 1220).
- Reporting data to the SPI: providing CAHSEE data to the SPI or independent evaluators or the publisher is a state mandate. Specifically, providing the following information on each pupil tested: (1) date of birth, (2) grade level, (3) gender, (4) language fluency and home language, (5) special program participation, (6) participation in free or reduced priced meals, (7) enrolled in a school that qualifies for assistance under Title 1 of the Improving America’s School Act of 1994, (8) testing accommodations, (9) handicapping condition or disability, (10) ethnicity, (11) district mobility, (12) parent education, (13) post-high school plans. (§ 1207); and reporting to the CDE the number of examinations for each test cycle within 10 working days of completion of each test cycle in the school district, and for the district superintendent to certify the accuracy of this information submitted to CDE (§ 1225).

III. Position of the Parties and Interested Parties

A. Claimant’s Position

The claimant alleges that the test claim statutes and regulation impose a reimbursable state-mandated program for school districts under article XIII B, section 6 and Government Code section 17514. The claimant seeks reimbursement to:

- Offer pupils who have failed one or both parts of CAHSEE by the end of 12th grade the opportunity to receive intensive support and assistance for two years following the completion of 12th grade. A school district may employ different intensive instruction and services strategies aligned to the needs of the pupil, and intensive instruction and services may be provided on Saturdays, evenings, or at a time and location deemed appropriate by the school district. Intensive instruction and services may include individual or small group instruction; the hiring and training of teachers; purchasing, scoring, and reviewing diagnostic assessments; and the provision of instruction and services by a public or nonpublic entity, as determined by the school district.
- Notify pupils in writing that intensive services are available to eligible pupils for two years following 12th grade. Notice must also be posted in the school site office, district office, and on the school district’s website.
- Ensure that each eligible pupil receives an appropriate diagnostic assessment to identify areas of need.
- Submit an annual report to the Superintendent of Public Instruction (SPI) relating to the provision of intensive instruction and services provided.

The test claim is supported by a declaration from Patrick Day, Director of Maintenance, Operations, Purchasing, Contract Management for the San Jose Unified School District that

states: “the estimated annual costs to perform the activities required by Education Code sections 37254 and 52378 are approximately \$375,000.” The declaration recognizes funds appropriated in the Budget Act of 2007, but states that “none of the funds have been specifically identified as applicable to the increased activities required by Statutes of 2007, Chapter 526 and Chapter 730.”²⁴

B. State Agency Position

Finance, in comments filed in December 2008, points out that the portion of the test claim related to Statutes 2007, chapter 526 violates the statute of limitations in Government Code section 17551. Because the test claim was filed more than one year after the effective date of this statute, Finance concludes that the Commission has no statutory authority to hear and decide on the parts of the test claim relating to Statutes 2007, chapter 526. Finance also asserts that the test claim statutes do not impose a state mandate because the activities required under the CAHSEE Intensive Instruction and Services Program and the Middle and High School Supplemental Counseling Program are only required if the claimant chooses to receive state funding and participate in the programs. Finance also states that funding has been provided in every Budget Act since 2005 for the CAHSEE Intensive Instruction and Services Program and the Middle and High School Supplemental Counseling Program. According to Finance, in the 2007-2008 school year, claimant applied for and received \$304,066 in CAHSEE Intensive Instruction and Services Program funding, and \$1,008,269 in Middle and High School Supplemental Counseling Program funding. Finance also states that revenue limits are a source of funds for the test claim.

IV. Discussion

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 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.”²⁵ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”²⁶

Reimbursement under article XIII B, section 6 is required when the following elements are met:

²⁴ Test Claim, Declaration of Patrick Day, San Jose Unified School District, page 3-4.

²⁵ *County of San Diego v. State of California* (1997)15 Cal.4th 68, 81.

²⁶ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.²⁷
2. The mandated activity either:
 - a. Carries out the governmental function of providing a service to the public; or
 - b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.²⁸
3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.²⁹
4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.³⁰

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 6.³¹ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.³² 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.”³³

A. The Commission only has jurisdiction over Statutes 2007, chapter 730 and section 1204.5 of the title 5 regulations as amended by Register 2007, Number 51

There is no issue regarding the Commission’s jurisdiction over Education Code section 52379, as amended by Statutes 2007, chapter 730 and section 1204.5 of the title 5 regulations, as amended by Register 2007, Number 51. However, the remaining test claim statutes and regulations were

²⁷ *San Diego Unified School Dist. v. Commission on State Mandates (San Diego Unified School Dist.)* (2004) 33 Cal.4th 859, at p. 874.

²⁸ *San Diego Unified School Dist., supra*, 33 Cal.4th at pgs. 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

²⁹ *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

³⁰ *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; Government Code sections 17514 and 17556.

³¹ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

³² *County of San Diego, supra*, 15 Cal.4th 68, 109.

³³ *County of Sonoma, supra*, 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

not filed within the statute of limitations because of the test claim filing date of October 14, 2008.

1. Jurisdiction over Assembly Bill 347 (Stats. 2007, ch. 526)

Three of the code sections in this test claim (Ed Code §§ 37254, 52378, 52380) were amended by AB 347 (Stats. 2007, ch. 526). AB 347 was an urgency bill that took effect on October 12, 2007, the date it was chaptered.³⁴ The test claim was filed October 14, 2008, more than 12 months after AB 347's effective date (Oct. 12, 2007).

According to Government Code section 17551(c):

Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.³⁵

There is no evidence in the test claim that claimant first incurred increased costs later than the 12-month period after enactment of the statute. Therefore, based on the statute of limitations in Government Code section 17551(c), the Commission does not have jurisdiction over Education Code sections 37254, 52378 or 52380, as amended by AB 347 (Stats. 2007, ch. 526).

2. Jurisdiction over section 1204.5 of the title 5 regulations

Although the claimant does not state which version of the regulation (Cal. Code Regs., tit. 5, § 1204.5) is being pled in the test claim, the history of section 1204.5 shows that it was adopted in 2004 (Register 2004, No. 21, effective and operative May 19, 2004) and amended three times before the claim was filed: on August 16, 2005 (Register 2005, No. 33, effective and operative Aug. 16, 2005), March 16, 2006 (Register 2006, No. 11, effective and operative Mar. 16, 2006), and December 20, 2007 (Register 2007, No. 51, effective and operative Dec. 20, 1997).

Based on the filing date of the test claim (October 14, 2008), the Commission has jurisdiction only over the version of section 1204.5 of the title 5 regulations that was amended on December 20, 2007 (Register 2007, No. 51) and became effective the same day. The 2004 adoption of section 1204.5, and amendments made in 2005 and 2006 became effective more than 12 months before the filing date of the test claim, and there is no evidence in the record that the claimant first incurred increased costs under those amendments later than the 12-month period after the those amendments became effective.

In sum, the Commission has jurisdiction only over Education Code section 52379 (Stats. 2007, ch. 730) and California Code of Regulations, title 5, section 1204.5. (Register 2007, No. 51, Dec. 20, 2007.) These are analyzed below.

³⁴ Government Code, section 9600 (b) states in part that “urgency statutes shall go into effect immediately upon their enactment.”

³⁵ Government Code, section 17551(c) (Stats. 2004, ch. 890) effective Jan. 1, 2005. According to the Commission's regulations, “within 12 months of incurring increased costs” means filing by June 30 of the fiscal year following the fiscal year in which increased costs were first incurred. (Cal. Code Regs., tit. 2, § 1183(c).)

B. Education Code Section 52379 (as amended by Stats. 2007, ch. 730) and title 5 California Code of Regulations , Section1204.5 (Reg. 2007, No. 51) do not impose a state-mandated new program or higher level of service on school districts

1. Middle & High School Supplemental Counseling Program (Ed. Code, § 52379, Stats. 2007, ch. 730)

Education Code section 52379 was amended by the test claim statute (Stats. 2007, ch. 730) to clarify the funding appropriated under the Middle and High School Supplemental Counseling Program as follows (noted by ~~strikeout~~ and italics):

(a) Funds appropriated in the annual Budget Act for the purposes of this chapter shall be allocated to school districts based on an equal amount per pupil enrolled in the district in the prior fiscal year, based on the fall California Basic Educational Data System (CBEDS) enrollment data, in grades 7 to 12, inclusive, with the following minimum-grant exceptions:

(1) Five thousand dollars (\$5,000) for each schoolsite that has 100 or fewer pupils enrolled in any of grades 7 to 12, inclusive.

(2) Ten thousand dollars (\$10,000) for each schoolsite that has ~~between~~ *at least 101 and, but not more than 200*, pupils enrolled in any of grades 7 to 12, inclusive.

(3) Thirty thousand dollars (\$30,000) or an amount per pupil enrolled, whichever is greater, for each schoolsite with more than 200 pupils enrolled in any of grades 7 to 12, inclusive.

(b) Funds allocated pursuant to this section shall supplement, and not supplant, expenditures made by a school district for school counseling programs.

(c) For purposes of this section, a charter school is not eligible to receive a minimum grant but instead shall receive an amount per pupil enrolled in grades 7 to 12, inclusive.

(d) Funds appropriated in the annual Budget Act for the purposes of this chapter shall be used to provide supplemental counseling services delivered by personnel who hold a valid pupil personnel services credential.

The legislative history of this bill indicates that it is “the annual Education ‘clean-up’ bill that makes various non- controversial revisions to statute.”³⁶ The amendment to section 52379 was described as “Corrects wording in the Middle & High School Supplemental Counseling Program to specify that school sites with an enrollment in grades 7 through 12 of 101 through and including 200 pupils receive a minimum grant of \$10,000.”³⁷

³⁶ Senate Committee on Education, Analysis of SB 132 (2007-2008 Reg. Sess.) as amended March 26, 2007, page 5.

³⁷ *Id.*, page 5.

This code section, as amended in 2007, describes how funding is allocated for the counseling program, but imposes no requirements on a school district. Thus, the Commission finds that Education Code 52379 (Stats. 2007, ch. 790) does not impose a state-mandated program on school districts.

2. Grade 11 and 12 and adult student testing dates (Cal.Code Regs., tit.5, § 1204.5, as amended by Reg. 2007, No. 51.)

The test claim regulation was amended operative December 20, 2007 (Reg. 2007, No. 51) as follows.

§ 1204.5 Grades 11 and 12 and Adult Student Testing Dates.

(a) School districts shall provide eligible pupils in grade 11 at least two opportunities per school year to take the section(s) of the examination not yet passed. Eligible pupils in grade 11 ~~who have not yet passed one or both sections of the examination shall have up to two opportunities per year to~~ may take the section(s) of the examination not yet passed up to two times per school year and may take the examination in successive administrations ~~and may elect to take the examination during these opportunities.~~

(b) School districts shall provide eligible pupils in grade 12 at least three opportunities per school year to take the section(s) of the examination not yet passed. Eligible pupils in grade 12 ~~shall have up to three opportunities to take the section(s) of the examination not yet passed. The district shall offer either three opportunities during grade 12 or two opportunities in grade 12 and one opportunity in the year following grade 12 to~~ may take the section(s) of the examination not yet passed up to three times per school year and may take the examination in successive administrations. ~~Eligible pupils in grade 12 may elect to take the examination during district provided opportunities.~~

(c) School districts shall provide eligible adult students at least three opportunities per school year to take the section(s) of the examination not yet passed. Eligible adult students ~~may shall have up to three opportunities per year to~~ take the section(s) of the examination not yet passed up to three times per school year and may take the examination in successive administrations ~~and may elect to take the examination during these opportunities.~~

(d) ~~Districts shall not test eligible pupils in grade 11 in successive administrations within a school year.~~ Eligible pupils in grades 11 and 12 and eligible adult students should be offered appropriate remediation or supplemental instruction before being retested.

This regulation affects eligible pupils and eligible adult students, defined as:

"Eligible pupil" is a person enrolled in a California public school in grade 10, 11, or 12, including those pupils placed in a nonpublic school through the individualized education program (IEP) process pursuant to Education Code

section 56365, who has not passed both the English-language arts section and the mathematics section of the high school exit examination.³⁸

"Eligible adult student" is a person enrolled in an adult school operated by a school district who is working to attain a high school diploma and has not passed both the English-language arts section and the mathematics section of the high school exit examination. This term does not include pupils who are concurrently enrolled in high school and adult school.³⁹

As indicated in the background, the purpose of the amendment was to clarify the number of times pupils may take the CAHSEE in each grade and to permit grade 11 pupils to take the CAHSEE in successive administrations.⁴⁰

The amendments to section 1204.5 do not impose a state-mandated new program or higher level of service. Except for the amendment to subdivision (d) that removes a prohibition on testing grade 11 pupils in successive administrations within a school year, the amendments regarding the number of times a pupil may take the CAHSEE are merely clarifying. The amendments do not increase the number of times per year pupils may take the CAHSEE. Both before and after the 2007 amendment, eligible pupils in grade 11 may take the CAHSEE up to two times per year, eligible pupils in grade 12 may take the CAHSEE up to three times per year, and eligible adult students may take the CAHSEE up to three times per year. There is nothing to indicate that allowing successive administrations for grade 11 pupils in subdivision (d) imposes a higher level of service on a school district beyond that provided under prior law. Therefore, the Commission finds that California Code of Regulations, title 5, section 1204.5 (Register 2007, No. 51, operative Dec. 20, 2007) is not a state mandated new program or higher level of service.

V. Conclusion

Based on the foregoing, the Commission finds that the claimant failed to file this test claim within the statute of limitations provided in Government Code section 17551(c) with respect to Education Code sections 37254, 52378, and 52380, as amended by AB 347 (Stats. 2007, ch. 526) and section 1204.5 of the title 5 regulations as adopted in 2004 and amended in 2005 and 2006 and, thus, the Commission does not have jurisdiction to make findings on these sections.

The Commission further finds that Education Code section 52379, as amended by Statutes 2007, chapter 730, and section 1204.5 of the title 5 regulations, as amended in 2007 (Register 2007, No. 51) do not impose a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution.

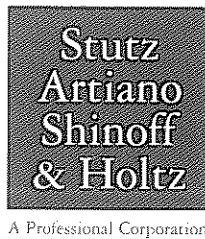
Accordingly, the Commission denies this test claim.

³⁸ California Code of Regulations, title 5, section 1200(d) as amended by Register 2007, No. 51, operative December 20, 2007.

³⁹ California Code of Regulations, title 5, section 1200(c) as amended by Register 2007, No. 51, operative December 20, 2007.

⁴⁰ CDE, Initial Statement of Reasons, California High School Exit Exam Regulations, February 20, 2007, page 1.

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Received
 April 10, 2013
 Commission on
 State Mandates

April 10, 2013

Heather Halsey
 Executive Director
 Commission on State Mandates
 980 9th Street, Suite 300
 Sacramento, CA 95814

**Re: Draft Staff Analysis
 High School Exit Exam II, 08TC-TC-02
 Education Code section 37254, et al.
 San Jose Unified School District, Claimant**

Dear Ms. Halsey:

Please be advised claimant, San Jose Unified School District, submits the following comments in response to the draft staff analysis in the above matter.

The Draft Staff Analysis incorrectly recommends denial of the activities included in the test claim citing California Government Code section 17551(c), failure to file a test claim within 12 months from the effective date of the statute.¹

1. The Test Claim was filed on the First Business Day Following a Court Holiday

The test claim statute was enacted on October 12, 2007 and the operative date for filing the test claim, within twelve months, was October 11, 2008 a Saturday. (See Exhibit "1", Microsoft Outlook Calendar-October 2008)

If the last day for the performance of any act provided or required by law to be performed within a specified period of time is a holiday, then that period is hereby extended to and including the next day that is not a holiday.

¹ Gov't Code 17551. (a) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution. (b) Except as provided in Sections 17573 and 17574, commission review of claims may be had pursuant to subdivision (a) only if the test claim is filed within the time limits specified in this section. (c) Local agency and school district test claims shall be filed not later than 12 months following the effective date of a statute or executive order, or within 12 months of incurring increased costs as a result of a statute or executive order, whichever is later.

High School Exit Exam II, 08TC-TC-02

For purposes of this section, "holiday" means all day on Saturday, all holidays specified in Section 135 and, to the extent provided in section 12b, all days that by terms of 12b are required to be considered as holidays.²

The test claim analysis fails to mention that October 14, 2008 was a Tuesday. The prior day Monday October 13, 2008 was a state holiday, Columbus Day and every Sunday is a state holiday.

2. **The Law provides the Public an extension of time for the transaction of business.**

The intent of the Legislature for enacting the above Government Code section was "to give persons an extension of time equal to the number of intervening holidays which deprive them of access to public offices or institutions for the transaction of business." (*Laubisch v. Roberdo* (1954) 43 Cal.2d 707.) "Various decisions of the appellate court to the State of California have held that the provisions of the Code of Civil Procedure section 12a apply to a wide assortment of acts provided or required by law to be done within a particular time frame." (*People v. International Fidelity Ins. Co.* (2001) 92 Cal.App.4th 470, 475.) The facts in this case are as follows:

On August 2, 1998, IFIC posted a \$50,000 bail bond for the release of felony defendant Juan F. Lopez from custody. On August 10, 1998, Lopez failed to appear in court and bail was declared forfeited. A notice of forfeiture of the bond was mailed on August 12, 1998. The 185th day after such mailing was February 13, 1999, a Saturday and holiday; the following Monday was an official court holiday, when courts were not open for business. Tuesday, February 16, 1999, was the next business day after February 13, on which the courts were open. On February 16, 1999, the 188th day after mailing of notice of forfeiture, IFIC requested, and the court granted, a 90-day tolling of the 185-day period. The 90th day after February 16, 1999, was

² Section 12a of the Code of Civil Procedure.

³ Government Code § 6700. State holidays; The holidays in this state are:
(a) *Every Sunday.* (emphasis added)
(b) January 1st.
(c) The third Monday in January, known as "Dr. Martin Luther King, Jr. Day."
(d) February 12th, known as "Lincoln Day."
(e) The third Monday in February.
(f) March 31st known as "Cesar Chavez Day."
(g) The last Monday in May.
(h) July 4th.
(i) The first Monday in September.
(j) September 9th, known as "Admission Day."
(k) *The second Monday in October, known as "Columbus Day."* (emphasis added)
(l) November 11th, known as "Veterans Day."
(m) December 25th.

High School Exit Exam II, 08TC-TC-02

May 17, 1999. On May 7, 1999, summary judgment was entered against IFIC on the forfeiture.

The Court of Appeal, held that: (1) the 185-day period for seeking relief, which expired on a holiday, was extended until the next business day following the holiday. The issue before the Commission is nearly factually identical. Claimant filed the test claim the next business day following the holiday.

The Commission on State Mandates a quasi judicial body, is bound to follow well settled jurisprudence in dealing with the compliance of the statute of limitations period. Based on the aforementioned statutory and case authority, the Commission has jurisdiction to determine that the test claim statutes are reimbursable mandates.

3. Claimant Request Test Claim Be Amended.

The application of Government Code 17554, permits the parties to agree to waive the application of any procedural requirement.⁴ Claimant requests the test claim be amended to include Education Code Sections 37254, 52378, 52379, 52380 and Title 5 California Code of Regulations section 1024.5. The equitable application of Government Code section 17554, provides all parties to the claim, the opportunity to agree that the Commission may waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553.

CONCLUSION

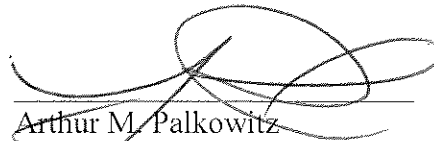
Staff analysis omitted pertinent facts upon determining the application of Govt. Code Section 17551(c). Since the period of time to file a test claim fell on a Saturday, Sunday or holiday provided the claimant with an extension to file on the next business day. The filing by the claimant on October 14, 2008 is in compliance with Govt. Code Section 17551(c) and did not violate the statute of limitation.

⁴ Government Code section 17554. With the agreement of all parties to the claim, the Commission may waive the application of any procedural requirement imposed by this chapter or pursuant to Section 17553.

High School Exit Exam II, 08TC-TC-02

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.



Arthur M. Palkowitz
Attorney for the Claimant

October 2008

October 2008

November 2008

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 60850, 60851,
60853, 60855;
Statutes 1999x, Chapter 1; Statutes 1999,
Chapter 135;
California Code of Regulations, Title 5,
Sections 1200 – 1225 in effect March 2003.
Filed on January 25, 2001,
By Trinity Union High School District,
Claimant

No. 00-TC-06

High School Exit Examination

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

(Adopted on March 25, 2004)

STATEMENT OF DECISION

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

PAULA HIGASHI, Executive Director

Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON:

Education Code Sections 60850, 60851, 60853, 60855;
Statutes 1999x, Chapter 1; Statutes 1999, Chapter 135;
California Code of Regulations, Title 5, Sections 1200 – 1225 in effect March 2003.
Filed on January 25, 2001,
By Trinity Union High School District,
Claimant

No. 00-TC-06

High School Exit Examination

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

(Adopted on March 25, 2004)

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on March 25, 2004. David Scribner appeared on behalf of claimant, Trinity Union High School District. Michael Wilkening and Lenin Del Castillo appeared on behalf of the Department of Finance (DOF). Juan Sanchez appeared on behalf of the California Department of Education. Paul Warren appeared on behalf of the Legislative Analyst’s Office.

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 5-0.

BACKGROUND

A. Test Claim Legislation

The test claim legislation¹ that established the high school exit exam (HSEE) was sponsored by Governor Davis in 1999, and enacted during an extraordinary session of the Legislature dedicated to education reform issues. The purpose of the HSEE is to “significantly improve pupil achievement in public high schools and to ensure that students who graduate from public high schools can demonstrate grade-level competency

¹ Although part of Statutes 1999x, chapter 1, claimant did not plead Education Code section 60852. Therefore, the Commission makes no findings on Education Code section 60852.

in the state content standards for writing, reading and mathematics.”² The HSEE tests “eligible pupils”³ on mathematics through Algebra I, and English/Language arts.⁴

The test claim legislation⁵ originally required high school students, beginning in the 2003-2004 school year, to pass the HSEE as a condition of receiving a diploma or graduating from high school.⁶ Statutes 2001, chapter 716 (Assem. Bill No. 1609) authorizes the State Board of Education (SBE) to delay the date upon which passing the HSEE is required for graduation. The SBE has postponed the HSEE requirement for graduation until the class of 2006, and has shortened the length of the HSEE from three to two days.⁷

The HSEE is administered by the “test administrator,” defined as,

a certificated employee of a school district who has received training in the administration of the [HSEE] from the high school exit examination district or test site coordinator.⁸

The test administrator may be assisted by a test proctor, “an employee of a school district who has received training specifically designed to prepare him or her to assist the test

² <<http://www.cde.ca.gov/statetests/cahsee/background/info.html>> [as of February 2, 2004].

³ An eligible pupil is “one who is enrolled in a California public school in any of grades 10, 11, or 12 who has not passed either the English/language arts section or the mathematics section of the [HSEE].” (Cal. Code Regs, tit. 5, § 1200, subd. (e)).

⁴ <<http://www.cde.ca.gov/statetests/cahsee/background/info.html>> [as of February 2, 2004]. More specific content is listed on the website as follows:

The [English] part [of the HSEE] addresses state content standards through grade 10. In reading, this includes vocabulary, decoding, comprehension, and analysis of information and literary texts. In writing, this covers writing strategies, applications, and the conventions of English (e.g. grammar, spelling, and punctuation). The mathematics part of the [HSEE] addresses state standards in grades 6 and 7 and Algebra I. The exam includes statistics, data analysis and probability, number sense, measurement and geometry, mathematical reasoning, and algebra. Students are also asked to demonstrate a strong foundation in computation and arithmetic, including working with decimals, fractions, and percents.

⁵ Statutory references are to the Education Code, unless otherwise indicated.

⁶ Education Code section 60851, subdivision (a).

⁷ <<http://www.cde.ca.gov/statetests/cahsee/background/info.html>> [as of February 2, 2004].

⁸ California Code of Regulations, title 5, section 1200, subdivision (g). This section was amended in May 2003 to add “...or a person assigned by a nonpublic school to implement a student’s Individualized Education Program (IEP)...”

administrator in administration of the [HSEE].”⁹ Others with roles in the HSEE are the district coordinator and test site coordinator, whose functions are discussed below.

In addition to the 2001 amendment to the HSEE statutes mentioned above (Stats. 2001, ch. 716), the Legislature also amended the HSEE program in 2002 (Stats. 2002, ch. 808, Sen. Bill No. 1476), and in 2003 (Stats. 2003, ch. 803, Sen. Bill No. 964). These statutes are not before the Commission, which makes no findings on them unless noted herein.

Additionally, the HSEE regulations¹⁰ were amended in May 2003 and are in the process of being amended again. According to the California Department of Education’s (CDE) website,¹¹ the comment period for the latter regulation amendments ended September 30, 2003. The amended regulations, like the statutes, are not before the Commission. Thus, the Commission makes no findings on regulations adopted subsequent to March 2003, when the test claim was amended to add the regulations¹² (the May 2003 amendments to the HSEE regulations are footnoted).

B. Prior Law

The test claim legislation included a finding that “[l]ocal proficiency standards established pursuant to Section 51215 of the Education Code are generally set below a high school level and are not consistent with state adopted academic content standards.” (Stats. 1999x, ch. 1, § 1). These proficiency standards were enacted in 1977 and repealed by the test claim legislation. They required school districts with grades 6-12 to establish basic skills proficiency standards and administer proficiency assessments (usually tests) that all pupils must pass to graduate. The locally developed tests and standards were aligned to local curriculum, and at a minimum addressed, "reading comprehension, writing and computational skills, in the English language" (former Ed. Code, § 51215, subd. (c)). Different standards and testing procedures were authorized for special education pupils and other pupils with a diagnosed learning disability (former Ed. Code, § 51215, subd. (d)). Assessment of pupil proficiency in English was required at least once during grades 4 through 6, and 7 through 9, and twice during grades 10 and 11. Districts could defer assessing pupils of limited English proficiency until the pupils had received at least 24 months of instruction, including six months of instruction in English (former Ed. Code, § 51216, subd. (a)).

C. Federal Law

⁹ California Code of Regulations, title 5, section 1200, subdivision (h).

¹⁰ References to regulations are to California Code of Regulations, title 5, sections 1200-1225, unless otherwise indicated.

¹¹ <<http://www.cde.ca.gov/regulations/cahseeseb15dnot090903.pdf>> [as of February 2, 2004].

¹² California Code of Regulations, title 5, section 1218.5 was adopted in May 2003 and requires the school district to administer the HSEE to the pupil with modifications if the pupil’s IEP or Section 504 plan indicates that it is appropriate and necessary for a pupil to use modifications. As a regulation adopted after March 2003 the test claim amendment, the Commission makes no finding on Section 1218.5.

Some of the HSEE activities arise under federal law, warranting a summary of those statutes.

Individuals with Disabilities Education Act: Administering statewide assessments with accommodations to disabled students, and Individualized Education Programs (IEPs) are provided for under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.), the purposes of which are stated in 20 U.S.C. § 1400 (d):

(1)(A) to ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services ... (B) to ensure that the rights of children with disabilities and parents ... are protected; and (C) to assist States, localities, educational services agencies, and Federal agencies to provide for the education of all children with disabilities;

Other purposes of the IDEA are, “early intervention services for infants and toddlers with disabilities ... to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities...and to assess, and ensure the effectiveness of efforts to educate children with disabilities.” (*Ibid.*) Assistance is available to states (20 U.S.C. § 1411, 1412) and local educational agencies (20 U.S.C. § 1413) that meet specified criteria (34 C.F.R. § 300.110 (1999)). IDEA requires that disabled children be “included in general State and district-wide assessment programs, with appropriate accommodations, where necessary” (20 U.S.C. § 1412 (a)(17), 34 C.F.R. § 300.138 (1999).) IDEA also provides for the IEP, a document with specified contents that includes (1) measurable annual goals to meet the disabled child’s needs regarding the curriculum and other educational needs, and (2) the special education and aids and services to be provided to the child (20 U.S.C. § 1414 (d)). The HSEE statutes and regulations conform to IDEA’s statewide assessment, accommodations, and IEP requirements.

The predecessor to IDEA is the federal Education of the Handicapped Act (FEHA), which since its 1975 amendments has

required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412 (a).) The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states [citations omitted]. ... The Supreme Court has noted that Congress intended the act to establish “a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children.” [citations omitted.]¹³

The *Hayes* court held that FEHA is a federal mandate.¹⁴ *Hayes* also held,

¹³ *Hayes v. Commission on State Mandates*, (1992) 11 Cal. App. 4th 1564, 1587.

¹⁴ *Id.* at page 1592.

To the extent the state implemented the act [FEHA] by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention.¹⁵

No Child Left Behind Act: The federal government required statewide systems of assessment and accountability (such as HSEE) for schools and districts participating in the Title I program under the Improving America's Schools Act (IASA) of 1994. In 2002, the federal No Child Left Behind (NCLB) Act replaced the IASA. Under NCLB, annual assessments in mathematics, reading and science are required (20 U.S.C. § 6311 (b)(3)(A), 34 C.F.R. § 200.2 (a) (2002)), although the science assessments need not be conducted until the 2007-2008 school year (*Ibid*). States are also required, by school year 2002-2003, to “provide for an annual assessment of English proficiency ...of all students with limited English proficiency....” (20 U.S.C. § 6311 (b)(7).) One of the requirements of the assessment system is that it “be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.” (34 C.F.R. § 200.2 (b)(2) (2002).) The assessment system, like all the NCLB requirements, is merely a condition on grant funds (20 U.S.C. § 6311 (a)(1)) that is not otherwise mandatory (20 U.S.C. §§ 6575, 7371).

Equal Educational Opportunities Act of 1974, Title VI of the Civil Rights Act: The test claim statute states that the HSEE, “regardless of federal financial participation, shall comply with Title VI of the Civil Rights Act (42 U.S.C. § 2000d et seq.), its implementing regulations (34 C.F.R. Part 100), and the Equal Educational Opportunities Act of 1974 (EEOA) (20 U.S.C. 1701).”¹⁶ Title VI of the Civil Rights Act prohibits discrimination on grounds of race, color or national origin on programs or activities receiving federal financial assistance. The EEOA states that all public school children “are entitled to equal educational opportunity without regard to race, color, sex or national origin, [and] the neighborhood is the appropriate basis for determining public school assignments.” (20 U.S.C. 1701.)

D. Prior Test Claims

In December 2001, the Commission found that notifying parents about the HSEE (Ed. Code, § 48980, subd. (e), as amended in 2000) is a reimbursable mandate in the *Annual Parent Notification* test claim (99-TC-09 and 00-TC-12). The Trinity Union High School District (current claimant) did not plead section 48980. Although the Commission already made findings on section 48980 and therefore does not have jurisdiction over that statute, the *Annual Parent Notification* test claim impacts findings in this claim on section 60850, subdivisions (e)(1) and (f)(1) regarding parental notification, as discussed below.

¹⁵ *Id.* at page 1594.

¹⁶ Education Code section 60850, subdivision (e)(2).

California's other statewide student-testing requirement is the Standardized Testing and Reporting (STAR) program. On August 24, 2000, the Commission found the STAR statutes and regulations¹⁷ to be partially reimbursable (97-TC-23).

Claimant's Position

Claimant contends that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimant seeks reimbursement for the costs of:

- (1) field testing the HSEE by selected school districts before implementation to ensure the HSEE is free from bias and its content is valid and reliable;
- (2) administration of the HSEE in the 2001-02 school year to all pupils in grade 10 and administration of any part of the HSEE to all pupils who were in grade 10 in the 2001-02 school year until each section of the examination has been passed;
- (3) administration of the HSEE to all pupils in grades 10, 11, or 12 on the dates designated by the Superintendent of Public Instruction (SPI);
- (4) providing HSEE results to all pupils within eight weeks of administering the exam and providing HSEE results to pupils that failed any portion of the exam in time for the pupil to retake that portion of the exam at the next administration;
- (5) meetings to discuss restructuring academic offerings to pupils who do not demonstrate the skills necessary to succeed on the HSEE;
- (6) providing information as requested by the SPI and independent evaluators;
- (7) training school district staff regarding administration of the HSEE;
- (8) modifying school district policies and procedures to reflect the requirements outlined in the test claim legislation; and
- (9) any additional activities identified as reimbursable during the Parameters and Guidelines phase.

In March 2003, claimant amended the test claim to add California Code of Regulations, title 5, sections 1200 – 1225. These regulations address HSEE-related topics, including definitions of terms, pupil identification, documentation, pupil information, data for analysis, notice, HSEE district coordinator and test site coordinator, test security, test site delivery, timing/scheduling, allowable accommodations for pupils with disabilities or English learners, requests for accommodations, use of modifications, independent work, invalidation of test scores, cheating, and apportionment. As stated above, this analysis only concerns the HSEE regulations that were operative as of March 2003 when claimant amended the test claim.

¹⁷ Education Code sections 60607, subdivision (a), 60609, 60615, 60630, 60640, 60641, and 60643, as amended by Statutes 1997, chapter 828; and California Code of Regulations, title 5, sections 850-874.

Claimant's responses to DOF's comments are in the "discussion" section of this analysis. Claimant submitted comments on the draft staff analysis in February 2004 in which it "agrees with most of the analysis." Claimant disagrees on three issues that are discussed below. Attached to claimant's comments on the draft analysis are six declarations from school districts to show the HSEE costs exceed the HSEE apportionment.

State Agency Position

In its April 2001 comments¹⁸ on the test claim, DOF states that no provisions are reimbursable because they are either voluntary (in the case of the first field test) or already funded in the budget. According to DOF, test administration, data collection and training staff are already budgeted. Test administration would not be reimbursable since districts already receive a per pupil funding rate for up to 180 days (or its equivalent minutes) of instruction and HSEE administration falls within the time allotted for regular instruction. DOF also states that section 60853, subdivision (b) is merely a statement of legislative intent. This section concerns school district restructuring of academic offerings to pupils who have not demonstrated skills necessary to succeed on the HSEE.

DOF's assertions did not include support by "documentary evidence ... authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so."¹⁹ DOF's comments are not relied on by the Commission, which reaches its own conclusions based on evidence in the record.

Neither CDE nor any other state agency commented on the test claim.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution²⁰ recognizes the state constitutional restrictions on the powers of local government to tax and spend.²¹ "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

¹⁸ Letter from Department of Finance, April 3, 2001.

¹⁹ California Code of Regulations, title 2, section 1183.02, subdivision (c)(1).

²⁰ Article XIII B, section 6 provides:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates: (a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

²¹ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 735.

articles XIII A and XIII B impose.”²² 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.²³ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.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 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

²² *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²³ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174. In *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal.4th at page 742, the court agreed that:

[A]ctivities undertaken at the option or discretion of a local government 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 obligated to incur costs as a result of its discretionary decision to participate in a particular program or practice.

The court left open the question of whether non-legal compulsion could result in a reimbursable state mandate, such as in a case where failure to participate in a program results in severe penalties or “draconian” consequences. (*Id.* at p. 754.)

²⁴ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

²⁵ *Lucia Mar Unified School District*, *supra*, at page 835.

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; Government Code sections 17514 and 17556.

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

and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”²⁸

This test claim presents the following issues:

- Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose a “new program or higher level of service” on school districts within the meaning of article XIII B, section 6 of the California Constitution?
- Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

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

A. Does the test claim legislation impose state-mandated duties?

The issue is whether any of the following constitute state-mandated activities that are subject to article XIII B, section 6.

Duties of the Superintendent of Public Instruction (Ed. Code, § 60850, subs. (a), (b), (d), (e)(2), (e)(3), (e)(4) & (h).): Subdivision (a) of this section requires the SPI to develop the HSEE in accordance with statewide content standards adopted by the State Board of Education (SBE). Subdivision (b) requires the SPI, with the approval of the SBE, to establish a HSEE Standards Panel to assist in the design and composition of the HSEE and to ensure it is aligned with statewide content standards. Subdivision (d) requires the SPI to submit the HSEE to the Statewide Pupil Assessment Review Panel to review the exam. Subdivision (e)(2) requires that the HSEE comply with federal anti-discrimination statutes as mentioned above in the background. Subdivision (e)(3) concerns the validity for the HSEE, which is the SPI’s responsibility. Subdivision (e)(4) requires the HSEE to “be scored as a criterion referenced examination.” Scoring appears to be the publisher’s function based on section 1210, subdivision (b) of the HSEE regulations that requires returning test materials “in the manner . . .required by the publisher.” DOF also commented that the publisher scores the HSEE. Subdivision (h) states that the chapter does not prohibit a district from requiring pupils to pass additional exit examinations approved by the district. Because these provisions do not mandate a school district to perform an activity, they are not subject to article XIII B, section 6.

Field-testing (Ed. Code, § 60850, subd. (c).): This subdivision states that the SPI “shall require that the examination be field-tested before actual implementation to ensure that the examination is free from bias and that its content is valid and reliable.” The statutory language does not mandate that every school district participate in field-testing.

Claimant states that activities associated with field-testing the HSEE represent a new program imposed on school districts.

²⁸ *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817; *County of Sonoma v. Commission on State Mandates, supra*, 84 Cal.App.4th at page 1280.

DOF commented that three field tests were scheduled, the first during fall 2000. DOF states that the CDE randomly selected 200 high schools to participate, but participation was voluntary and schools were given the option to refuse to administer the field test. According to DOF, the second and third field tests were incorporated in the March and May 2001 administrations of the HSEE as part of the actual exam, which is covered by the funds in the budget. DOF argues that to the extent that schools voluntarily participate in field-testing, doing so is not a mandated cost.

Claimant contends that the \$3 appropriation per test administration is insufficient to cover the costs of the March and May 2001 HSEE field tests. According to claimant, the appropriation does not rise to the level required in Government Code section 17556, subdivision (e) to completely offset any claims that the activities associated with field-testing the HSEE are reimbursable. This is discussed under issue 3 below.

There is no evidence in the record that claimant or any school district was required to participate in field-testing. On February 3, 2003, Commission staff sent a letter to claimant's representative requesting documentary evidence regarding claimant's participation in the field-testing for each administration of the HSEE, but received no response.

Therefore, the Commission finds that section 60850, subdivision (c), is not subject to article XIII B, section 6 because (1) there is a lack of evidence in the record regarding claimant's participation in field testing, and (2) the statutory language does not mandate school district participation.

HSEE results (Ed. Code, § 60851, subd. (d).): Section 60851, subdivision (d),²⁹ states:

The results of the high school exit examination shall be provided to each pupil taking the examination within eight weeks of the examination administration and in time for the pupil to take any section of the examination not passed at the next administration. A pupil shall take again only those parts of the examination he or she has not previously passed and may not retake any portion of the exam that he or she has previously passed.

Subdivision (d) requires that HSEE results be provided to pupils within eight weeks, but does not specify who provides them. Prior law did not require notification of HSEE results to pupils.

DOF commented that the publisher is required to score all tests within an appropriate time frame so that pupils receive their results within eight weeks of testing. DOF states that the amount provided in the budget covers the costs associated with reporting of test results, including mailings. Claimant disputes the adequacy of the funding for this activity.

Claimant's February 2004 comments on the draft staff analysis include declarations from six school districts that providing the test results is a district activity. Claimant relies on these declarations for the interpretation of section 60851, subdivision (d) regarding districts' requirement to provide test results.

²⁹ This statute is currently section 60851, subdivision (e).

Interpretation of statutes, however, is a question of law.³⁰ The Commission cannot rely on claimant’s factual assertions in interpreting the test claim statute. Moreover, the “determination whether the statutes...at issue establish a mandate under section 6 is a question of law.”³¹ The test claim statutes and regulations are silent on the issue of who provides the HSEE results, as is the legislative history³² of the test claim statute.

Therefore, the Commission finds that providing HSEE results to all pupils within eight weeks of administering the HSEE and providing results to pupils that failed any portion of the HSEE in time for the pupil to retake that portion of it at the next administration is not a state mandate.

Adult students (title 5 regulations): Many of the title 5 regulations apply expressly to adult students as well as high school pupils.³³ Section 1200, subdivision (f) defines an “Eligible adult student” as:

...a person who is enrolled in an adult school operated by a school district and who has not passed either the English/language arts section or the mathematics section of the high school exit examination. This term does not include pupils who are concurrently enrolled in high school and adult school.

Therefore, the issue is whether administration of the HSEE and the related regulations are mandates as applied to adult students.

Education Code section 48200 states that each person between the ages of 6 and 18 years not otherwise exempted is subject to compulsory full-time education. Education Code section 52502, regarding adult classes, provides:

The governing board of a high school district or unified school district **may** establish classes for adults. If such classes result in average daily attendance in any school year of 100 or more, such districts **shall** establish an adult school for the administration of the program. [Emphasis added.]

Section 52502 contains no requirement for districts to establish adult classes. Only if the district first decides, in its discretion, to establish adult classes would it need to establish an adult school if the average daily attendance equals 100 or more. Therefore, the Commission finds that under article XIII B, section 6, the statutes and regulations concerning administration of the HSEE to adult students are not mandates.

³⁰ *Taxara v. Gutierrez* (2003) 114 Cal. App. 4th 945, 950.

³¹ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

³² The Legislative Counsel’s digest of the test claim legislation suggests that this is a district activity (Sen. Bill No. 2 (1999-2000 1st Ex. Sess.)) but Legislative Counsel’s opinion is not determinative on the issue of a mandate. *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

³³ The following title 5 regulations apply to both high school pupils and adult students: sections 1205, 1206, 1207, 1211, 1215, 1216, 1217, 1218, 1219, 1219.5, and 1220.

Restructuring academic offerings (Ed. Code, § 60853, subs. (b) & (c).): Section 60853, subdivision (b), as added by the test claim statute, provides:

It is the intent of the Legislature that a school district **consider** restructuring its academic offerings reducing the electives available to any pupil who has not demonstrated the skills necessary to succeed on the exit examination, so that the pupil can be provided supplemental instruction during the regularly scheduled academic year. [Emphasis added.]

Claimant contends that this provision requires meetings to discuss restructuring academic offerings to pupils who do not demonstrate the skills necessary to succeed on the HSEE. Claimant argues that the Legislature requires, at a minimum, that the school site meet to determine if restructuring is necessary to enable pupils to garner the skills necessary to pass the exit examination. Claimant argues that DOF's position ignores legislative intent for school districts to consider restructuring academic offerings.

Claimant's February 2004 comments reiterate this argument, seeking reimbursement for the initial meeting where a district must consider activities associated with restructuring the pupil's academic offerings. Claimant contends that the Legislature requires the school meet to determine if restructuring academic offerings is necessary to enable students to pass the exit examination. Claimant argues that section 60853's overall intent is for districts to prepare pupils to pass the exit examination, as stated in subdivision (a)'s call for using "regularly available resources and any available supplemental resources" to prepare pupils to pass the HSEE, and as stated in subdivision (c)'s statement that a "school district should prepare pupils to succeed" on the HSEE. Claimant argues these statements of legislative intent evidence the Legislature's overriding concern that school districts help prepare pupils to pass the HSEE.

DOF argues that this section merely states legislative intent. To the extent that schools restructure academic offerings in light of pupil performance on the HSEE, they do so on a voluntary basis. Therefore, DOF asserts there are no mandated costs.

The Commission finds that section 60853, subdivision (b) does not require meetings to discuss restructuring academic offerings to pupils who lack skills to pass the HSEE. The language of the statute is plainly permissive: "It is the intent of the Legislature that a school district **consider** restructuring its academic offerings..." (emphasis added). If the Legislature had intended to require restructuring academic offerings, it could have used mandatory language to do so (e.g., school districts shall restructure...).³⁴ Stating intent that school districts "consider" restructuring academic offerings does not make the restructuring activity mandatory. Therefore, based on the plain language of section 60853, subdivision (b), the Commission finds that restructuring academic offerings, or meeting to restructure academic offerings for pupils who lack the skills to pass the HSEE, is not mandated, and thus not subject to article XIII B, section 6.

Similarly, subdivision (c) states that school districts "**should** prepare students to succeed on the exit examination," and "...districts **are encouraged to** use existing resources to ensure that all pupils succeed." [Emphasis added.] Again, mandatory language was not

³⁴ Education Code section 75 states that "shall" is mandatory.

used. “‘Should’ generally denotes discretion and should not be construed as ‘shall.’”³⁵ There is no compulsion to spend revenue in subdivisions (b) and (c), which is necessary for finding a mandate.³⁶ Rather, these activities are discretionary, and therefore are not state mandates.³⁷

Thus, because they do not require a school district activity, the Commission finds that subdivisions (b) and (c) of section 60853 are not subject to article XIII B, section 6.

Test Proctors (Cal. Code Regs., tit. 5, § 1200, subd. (h).): This section defines a test proctor as “an employee of a school district who has received training specifically designed to prepare him or her to assist the test administrator in administration of the [HSEE].” (Cal. Code Regs., tit. 5, § 1200, subd. (h).) However, there is no requirement for school districts to use proctors for administering the HSEE.³⁸ Therefore, the Commission finds that using proctors is discretionary and therefore not an activity mandated by the state.

Permissive accommodations (Cal. Code Regs., tit. 5, §§ 1217, subd. (d), 1218, 1219 & 1219.5.): Section 1217, subdivision (d) authorizes a school district to request an accommodation from the CDE pursuant to section 1218 if the pupils individualized education program (IEP) team or 504 plan team proposes an accommodation for use on the HSEE not included in subdivision (b) of section 1217. Section 1218 authorizes the school district to request accommodations from CDE not included in section 1217, subdivision (b). Section 1218 also specifies the content for the request. Section 1219 requires the district to ensure that all test responses are the independent work of the pupil, and prohibits assistance to pupils in determining how the pupil will respond to each question, or leading the pupil to a response. Section 1219 prohibits school personnel from assisting pupils rather than mandating an activity.³⁹ Section 1219.5 provides that the pupil’s scores will be invalidated if a district allows a pupil to take the HSEE using one or more accommodations determined by the CDE to fundamentally alter what the test measures.⁴⁰ Because these sections authorize but do not require⁴¹ (or in the case of sections 1219 and 1219.5, merely prohibit) school district activities, the Commission finds that they are not subject to article XIII B, section 6.

³⁵ Sutherland’s Statutes and Statutory Construction (5th ed. 1992) section 57.03, page 7.

³⁶ *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal. App. 4th, 1176, 1189.

³⁷ *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal. 4th 727, 742; *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783.

³⁸ The HSEE administration regulations, California Code of Regulations, title 5, subdivisions 1204 – 1212, do not require the use of proctors.

³⁹ Section 1219 was non-substantively amended in May 2003 to alter the note.

⁴⁰ Section 1219.5 was non-substantively amended in May 2003 to alter the note.

⁴¹ *Department of Finance v. Commission on State Mandates*, *supra*, 30 Cal. 4th 727, 742.

Federally mandated accommodations (Ed. Code, § 60850, subd. (g), Cal. Code Regs., tit. 5, §§ 1216 – 1217.): Section 60850, subdivision (g) of the test claim statute provides:

The examination shall be offered to individuals with exceptional needs, as defined in Section 56026,⁴² in accordance with paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code and Section 794 and following of Title 29 of the United States Code. Individuals with exceptional needs shall be administered the examination with appropriate accommodations, where necessary.

This statute requires the HSEE be offered to pupils with disabilities (as defined in state and federal law), and that appropriate accommodations be provided where necessary. The title 5 regulations list what is appropriate. Neither claimant nor DOF commented on the HSEE administration accommodations.

As stated above, the court in *Hayes* stated that the federal Education of the Handicapped Act is a federal mandate. Section 60850, subdivision (g) merely implements the IDEA (an amendment/successor to the federal Education of the Handicapped Act), and IDEA’s regulations⁴³ in administering the HSEE. Therefore, the Commission finds that section 60850, subdivision (g) is not a state mandate subject to article XIII B, section 6, because it was inserted into the HSEE legislation to implement a federal law or regulation.⁴⁴

Similarly, section 1216 of the HSEE regulations states,

[A]ccommodations will be allowed that are necessary and appropriate to afford access to the test, consistent with federal law, so long as the accommodations do not fundamentally alter what the examination is designed to measure.

As with section 60850 above, section 1216 merely implements a federal law (IDEA). Therefore, the Commission finds that section 1216 is also not a state mandate subject to Article XIII B, section 6.⁴⁵

⁴² This section excludes “...pupils whose educational needs are due primarily to limited English proficiency...” from the definition of students with exceptional needs. (Ed. Code, § 56026, subd. (e)). It includes “special needs” students up to age 22.

⁴³ 34 C.F.R. section 300.138 provides, “The State must have on file with the Secretary [of Education] information to demonstrate that-- (a) Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations and modifications in administration, if necessary...”

⁴⁴ *County of Los Angeles v. Commission on State Mandates* (1995) 32 Cal.App.4th 805, 816.

⁴⁵ Section 1216 was non-substantively amended in May 2003 to change the note.

Section 1217, subdivision (a) of the regulations states:

Where necessary to access the test, pupils ...with disabilities shall take the [HSEE] with those accommodations that are necessary and appropriate to address the pupil's... identified disability(ies) and that have been approved by their individualized education program [IEP] teams or 504 plan teams,⁴⁶ including but not limited to those accommodations that the pupil...has regularly used during instruction and classroom assessments, provided that such accommodations do not fundamentally alter what the test measures. Approved accommodations for the [HSEE] must be reflected in the pupil's ...[IEP] or 504 plan.

Subdivision (b) of section 1217 lists accommodations that do not fundamentally alter what the test measures,⁴⁷ and subdivision (c) lists accommodations that would fundamentally alter what the test measures.⁴⁸

As with the other accommodations discussed above, those added to a pupil's IEP or 504 plan are required by federal law. Therefore, the Commission finds that section 1217, subdivisions (a) (b) and (c), listing HSEE accommodations into the pupil's IEP or 504 plan, is not a state mandate and is not subject to article XIII B, section 6.

In summary, because the test claim statutes and regulations discussed above are not state mandates, they are not subject to article XIII B, section 6, i.e., Education Code section 60850, subdivisions (a), (b), (c), (d), (e)(2), (e)(3), (e)(4), (g) and (h), Education Code section 60853, subdivisions (b) and (c), and California Code of Regulations, title 5, sections 1200, subd. (h), 1216, 1217, 1218, 1219 and 1219.5.

⁴⁶ A 504 plan is a document falling under the provisions of the Rehabilitation Act of 1973. (29 U.S.C. § 794, 34 C.F.R. § 104 et. seq.). It is designed to plan a program of instructional services to assist students with special needs who are in a regular education setting. An Individualized Education Program (IEP) is an IDEA program for special education students. (20 U.S.C. § 1414 (d)).

⁴⁷ According to subdivision (b) of section 1217 of the title 5 regulations:

Accommodations that do not fundamentally alter what the test measures include, but may not be limited to: (1) Presentation accommodations: Large print versions; test items enlarged through mechanical or electronic means; Braille transcriptions provided by the test publisher or a designee; markers, masks, or other means to maintain visual attention to the test or test items; reduced numbers of items per page; audio presentation on the math portion of the test, provided that an audio presentation is the pupil's ... only means of accessing written material.

⁴⁸ Section 1217, subdivision (c) was non-substantively amended in May 2003 as follows: “The following are modifications ~~accommodations are not allowed~~ because they ~~have been determined to~~ fundamentally alter what the test measures.” The May 2003 amendment also changed the section heading and note.

B. Is the remaining test claim legislation a “program” under article XIII B, section 6?

For the remainder of this analysis, “test claim legislation” refers to the statutes and regulations not already discussed: Education Code sections 60850, subdivisions (e)(1) and (f), 60851, 60853, subdivision (a), and 60855; and California Code of Regulations, title 5, sections 1200-1215, 1217.5, 1220, and 1225 (except § 1200, subd. (h)).

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a “program.” As discussed above, this means a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.⁴⁹ Only one of these findings is necessary to trigger article XIII B, section 6.⁵⁰

The test claim legislation consists of educational testing as a means to measure pupil achievement and school accountability. These activities are within the purview of public education, a program that carries out a governmental function of providing a service to the public.⁵¹ Moreover, the test claim legislation imposes unique requirements on school districts that do not apply generally to all residents and entities of the state.

Therefore, the test claim legislation is a program that carries out the governmental function of educational testing, and a law which, to implement state policy, imposes unique requirements on school districts and does not apply generally to all residents and entities in the state. As such, the Commission finds that the test claim legislation constitutes a program within the meaning of article XIII B, section 6.

Issue 2: Does the test claim legislation impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6 of the California Constitution?

Article XIII B, section 6 of the California Constitution states, “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 determine if the “program” is new or imposes a higher level of service, the test claim legislation is compared to the legal requirements in effect immediately before the enactment of the test claim legislation.⁵²

Adequate notice (Ed. Code, § 60850, subs. (e)(1) & (f)(1).): Subdivision (e)(1) of section 60850 provides that the “examination may not be administered to a pupil who did not receive adequate notice as provided for in paragraph (1) of subdivision (f) regarding the test.” Subdivision (f)(1) defines “adequate notice” as follows:

⁴⁹ *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d 46, 56.

⁵⁰ *Carmel Valley Fire Protection Dist.* (1987) 190 Cal.App.3d 521, 537.

⁵¹ “Education in our society is ...a peculiarly governmental function.” *Long Beach Unified School District v. State of California*, *supra*, 225 Cal.App.3d 155, 172.

⁵² *Lucia Mar Unified School Dist. v. Honig*, *supra*, 44 Cal.3d 830, 835.

“Adequate notice” means that the pupil and his or her parent or guardian have received written notice, at the commencement of the pupil’s 9th grade, and each year thereafter through the annual notification process established pursuant to Section 48980, **or if a transfer pupil, at the time the pupil transfers**. A pupil who has taken the exit examination in the 10th grade is deemed to have had “adequate notice” ...[Emphasis added.]

This statute prohibits giving the HSEE without providing adequate notice pursuant to section 48980.

In 2001, the Commission determined (in *Annual Parent Notification*, 99-TC-09 and 00-TC-12) that providing HSEE notification to parents, pursuant to section 48980, subdivision (e), was a reimbursable state mandated activity. School districts are eligible for reimbursement under the *Annual Parent Notification* (APN) parameters and guidelines, which state:

The Commission determined that Education Code section 48980, subdivisions (e)... resulted in costs mandated by the state by requiring school districts to provide to parents the following:

a. Notice that pupils will be required to pass a high school exit examination as a condition of graduation. (Ed. Code, § 48980, subd. (e).)⁵³

Claimant is not eligible for reimbursement under this claim for activities already decided under the APN parameters and guidelines.

In its February 2004 comments, claimant argues that the APN parameters and guidelines require annual notification, but do not apply to transfer students. Claimant points out that section 48981 requires the notice “be sent at the time of registration for the first semester or quarter of the regular school term” but that neither section 48980 nor 48981 require notifications for transfer students.

The Commission agrees. Providing notice to transfer students of the HSEE is required by section 60850, subdivisions (e)(1) and (f)(1), but not by section 48980, upon which the APN parameters and guidelines are based, nor elsewhere in California law. Therefore, the Commission finds that section 60850, subdivisions (e)(1) and (f)(1), is a new program or higher level of service on school districts for the purpose of notifying parents of *transfer* students who enroll after the first semester or quarter of the regular school term that, commencing with the 2003-04 school year, and each school year thereafter, each pupil completing 12th grade will be required to successfully pass the HSEE. The notification shall include, at a minimum, the date of the HSEE, the requirements for passing the HSEE, and the consequences of not passing the HSEE, and that passing the HSEE is a condition of graduation.

Documentation of notice (Cal. Code. Regs., tit. 5, § 1208.): Section 1208 of the title 5 regulations requires school districts to “maintain documentation that the parent or guardian of each pupil has received written notification as required by Education Code sections 48980 (e) and 60850 (f)(1).”

⁵³ Commission on State Mandates, Amended Parameters and Guidelines, *Annual Parent Notification*, 99-TC-09, 00-TC-12, adopted 11/30/95, last amended 5/23/02, page 7.

Prior law did not require maintaining documentation of HSEE notice to parents.⁵⁴ Neither claimant nor DOF commented on maintaining documentation of notice.

Thus, as a new requirement, the Commission finds (pursuant to Cal. Code Regs., tit. 5, § 1208) that the activity of maintaining documentation that each pupil's parent or guardian has received written notification of the HSEE is a new program or higher level of service.

Determining English language skills (Cal. Code Regs., tit. 5, § 1217.5): This regulation⁵⁵ states: "English learners must read and pass the [HSEE] in English. School districts must evaluate pupils to determine if they possess sufficient English language skills at the time of the [HSEE] to be assessed with the test."⁵⁶ If not, districts may provide additional time as an accommodation, in addition to instruction pursuant to Education Code section 60852.

Prior law, enacted in 1978, required that pupils of limited English proficiency be assessed to determine their primary language proficiency.⁵⁷ These provisions were sunset in 1987.⁵⁸ Education Code section 313 requires annual assessments of English-learner pupils' English skills, but not until the 2000-2001 school year,⁵⁹ so it does not predate the HSEE legislation.

Prior law, repealed by the test claim statute, required a "limited-English proficient pupil" to "be assessed for basic skills in the English language upon his or her own request or upon the request of his or her parent or guardian." (former Ed. Code, § 51216, subd. (a).) This statute also provided,

⁵⁴ Education Code section 49062. California Code of Regulations, title 5, section 432 requires retention of various kinds of pupil records, including "Mandatory Permanent Pupil Records," "Mandatory Interim Pupil Records" and "Permitted Records," each of which is defined to include specified data. Section 437 of the title 5 regulations provides for retention and destruction. However, none of these include the HSEE parental notification. It appears that Mandatory Interim Records (that includes parental prohibitions and authorizations of pupil participation) most closely resembles the HSEE notification. According to section 437, subdivision (c), Mandatory Interim Records, unless forwarded to another district, are "adjudged to be disposable when the student leaves the district or when their usefulness ceases." However, because the length of maintenance for HSEE notification records is specified in neither the statutes nor the regulations, the issue is not addressed in this analysis.

⁵⁵ Section 1217.5 was non-substantively amended in May 2003 to change only the note.

⁵⁶ The issue of whether this regulation constitutes a federal mandate under NCLB or its predecessor is discussed below under issue 3.

⁵⁷ Education Code section 52164.1 (sunset). This statute and related ones are the subject of a pending test claim: *California English Language Development Test 2* (03-TC-06).

⁵⁸ Education Code section 62000.2, subdivision (d).

⁵⁹ This is the subject of a pending test claim: *California English Language Development Test* (00-TC-16).

No individual English-speaking pupil or limited-English-proficient pupil shall receive a high school diploma unless he or she has passed the English language proficiency assessment normally required for graduation. (Former Ed. Code, § 51216, subd. (b).)

Prior law required an English assessment on request, and passage of the English language proficiency assessment to receive a high school diploma. Passage of this assessment for a diploma merely required assigning a pass/fail grade or score. Section 1217.5, on the other hand, also requires assigning a grade or score, and also expressly requires determining whether the pupil would take the HSEE based on the evaluation.

Therefore, the Commission finds that section 1217.5 constitutes a new program or higher level of service only for the activity of determining whether an English-learner pupil possesses sufficient English language skills at the time of the HSEE to be assessed with it.

HSEE administration (Ed. Code, § 60851, subds. (a), (b) & (c); Cal. Code Regs., tit. 5, §§ 1200, 1215, 1203 – 1206, 1209, 1210 & 1212.): Subdivision (a) of section 60851, as originally enacted reads:

Commencing with the 2003-04 school year⁶⁰ and each school year thereafter, each pupil completing grade 12 shall successfully pass the exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school. Funding for the administration of the exit examination shall be provided for in the annual Budget Act. The Superintendent of Public Instruction shall apportion funds appropriated for this purpose to enable school districts to meet the requirements of subdivisions (a), (b), (c), and (d). The State Board of Education shall establish the amount of funding to be apportioned per test administered, based on a review of the cost per test.

Subdivision (b) originally provided:

A pupil may take the high school exit examination in grade 9 beginning in the 2000-01 school year.⁶¹ Each pupil shall take the high school exit examination in grade 10 beginning in the 2001-02 school year and may take the examination during each subsequent administration, until each section of the examination has been passed.

Subdivision (c) requires the HSEE to be offered in public schools and state special schools that provide instructions in grades 10 through 12 on the dates designated by the SPI, and prohibits administering the HSEE on any dates other than those designated by the SPI as examination or makeup days.

Claimant pled the activity of administering the HSEE in the 2001-02 school year to all pupils in grade 10, and administering any part of the HSEE to all pupils who were in

⁶⁰ As indicated above, the HSEE as a graduation requirement has been postponed until the 2006 graduating class, but HSEE administration is not optional for districts.

⁶¹ Statutes 2001, chapter 716, (Assem. Bill No. 1609) amended this sentence to read, “A pupil may take the [HSEE] in grade 9 in the 2000-01 school year only.”

grade 10 in the 2001-02 school year until each section of the examination has been passed. Claimant also pled the activity of HSEE administration to all pupils in grade 10, 11 or 12 on the dates designated by the SPI.

DOF comments that these requirements would not be reimbursable since districts already receive a per pupil funding rate for up to 180 days (or equivalent minutes) of instruction and HSEE administration falls within the time allotted for regular instruction. DOF's comments and claimant's rebuttal regarding adequacy of funding is discussed below under issue 3.

Prior law did not require administration of the HSEE. Since a certificated employee (acting as a test administrator,⁶² or potentially as test site coordinator,⁶³ or district coordinator⁶⁴ or in another capacity) administers the HSEE during normal classroom hours, the question arises as to whether a teacher's time in doing so is reimbursable.

Teacher time: For reasons indicated below, class time minutes used by teachers administering the HSEE constitute instructional minutes that satisfy the school district's minimum minutes per school day required under the Education Code. Accordingly, a teacher's time for HSEE administration is not a new program or higher level of service because the state has not mandated an increased level of service for teachers to administer it that results in increased costs.

Preexisting law states that pupils are not to be enrolled for less than the minimum school day required by law.⁶⁵ Minimum school day statutes begin in section 46100, which requires school districts to fix the length of the school day subject to state law. Since before 1959, the state has required public schools to provide education for a minimum of 175 days in a fiscal year.⁶⁶ The state has also mandated a minimum number of instructional minutes each school day, which is 240 for grades 4 through 12, exclusive of recesses and lunch.⁶⁷ The minimum school days per year and the minimum number of instructional minutes per day did not change as a result of the HSEE statutes or regulations.

⁶² As stated above, the "Test administrator" means a *certificated employee* of a school district who has received training in the administration of the [HSEE] from the [HSEE] district or test site coordinator." [Emphasis added.] (Former Cal. Code Regs., tit. 5, § 1200, subd. (g).)

⁶³ Duties are listed in California Code of Regulations, title 5, section 1210, and discussed below.

⁶⁴ Duties are listed in California Code of Regulations, title 5, section 1209, and discussed below.

⁶⁵ Education Code section 48200.

⁶⁶ Education Code section 41420.

⁶⁷ Education Code sections 46113, 46115, and 46141.

During the instructional minutes, school districts are required to teach certain courses, and are required to conform the educational program to state standards.⁶⁸ Education Code section 51220 describes the required courses for grades 7 through 12 to include English and Math, among others.

Instructional preparation time is counted as part of the teacher full-time equivalent.⁶⁹ A “full-time” teaching position is defined as a position for not less than the minimum school day.⁷⁰ School districts may, but are not required to have teachers work longer per school day than the minimum number of minutes.⁷¹ In addition, if a school district compensates a teacher for work that is not part of the teacher’s contracted instructional day duties, the same compensation is required to be paid to all teachers that perform like work with comparable responsibilities.⁷² Education Code section 45023.5 states that “[n]othing in this section shall be construed as requiring a district to compensate certificated employees for work assignments which are not part of the contracted instructional day duties simply because other employees of the district receive compensation for work assignments which involve different types of service.”⁷³

State law requires teachers to provide instruction to pupils during the minimum number of minutes per school day, and does not mandate school districts to require teachers to work beyond the minimum school day. That decision is at the district’s discretion.

In a case about adding a domestic violence training course for public safety officers, the court held that it is not a mandate when the test claim legislation directs “local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.”⁷⁴ Similarly, the HSEE legislation merely reallocates instructional time to include administration of the HSEE.

Therefore, based on the plain language of the Education Code, administration of the HSEE is a new activity only if performed by a non-teacher certificated employee, such as an employee holding a service credential.⁷⁵ Thus, the Commission finds that HSEE

⁶⁸ Education Code section 51041.

⁶⁹ Section 41401, subdivision (d).

⁷⁰ Education Code section 45024, which was derived from section 13503 of the 1959 Education Code.

⁷¹ Education Code section 45024.

⁷² Education Code section 45023.5.

⁷³ Education Code section 45023.5 derives from section 13501.5 of the 1959 Education Code.

⁷⁴ *County of Los Angeles v. Commission on State Mandates*, *supra*, 110 Cal. App. 4th, 1176, 1194.

⁷⁵ Service credential employees include those with a specialization in pupil personnel services (Ed. Code, § 44266), specialization in health (Ed. Code, § 44267 & 44267.5), specialization in clinical rehabilitative services (Ed. Code, § 44268), library media

administration on SPI-designated dates to all pupils in grade 10 beginning in the 2001-2002 school year, and subsequent administrations for students who do not pass until each section of the HSEE has been passed, constitutes a new program or higher level of service. The Commission also finds that administration of the HSEE on SPI-designated dates to pupils in grade 9 in only the 2000-2001 school year who wish to take the HSEE is also a new program or higher level of service.⁷⁶ “Administration” does not include teacher time, and is limited to the activities specified in the title 5 regulations outlined below.

Training: According to section 1200, subdivision (g), test administrators are to be trained in administration of the HSEE, and test site coordinators train the test administrators “as provided in the test publisher's manual.”⁷⁷ Training is not listed in the regulations as a district coordinator duty, but section 1200 states that administrators are to be trained by either the test site or district coordinators. Therefore, section 1200 gives district coordinators the flexibility to train.

As to HSEE training generally, where a statute referring to one subject contains a provision, omitting the provision from a similar statute concerning a related subject is significant to show that a different intention existed.⁷⁸ Applying this rule, the test claim legislation provisions that do not mention training are significant to show that no training requirement was intended to apply.

Therefore, the Commission finds that training a test administrator either by a test site or (based on § 1200, subd. (g)) district coordinator as provided in the test publisher's manual⁷⁹ is a new program or higher level of service, except that a teacher's time is not reimbursed.

Additional time accommodation: Section 1215 allows pupils to have additional time to complete the HSEE within the test security limits provided in section 1211 (discussed below).⁸⁰ This accommodation applies to all pupils, not only those with special needs. Prior law did not allocate additional time for taking the HSEE.

The Commission finds that a teacher's additional time to administer the HSEE during normal classroom hours is not a new program or higher level of service. As discussed above under Teacher time, the state has not mandated an increased level of service to administer the HSEE outside the normal school day, which consists of 240 instructional

teachers (Ed. Code, § 44269), specialization in administrative services (Ed. Code, § 44270), and limited services credentials (Ed. Code, § 44272).

⁷⁶ The test claim legislation was amended by Statutes 2001, chapter 716 (Assem. Bill No. 1609) to limit 9th grade participation in the HSEE to the 2000-2001 school year.

⁷⁷ California Code of Regulations, title 5, section 1210, subdivision (b)(3).

⁷⁸ *Moncharsh v. Heily & Blase* (1992) 3 Cal. 4th 1, 26.

⁷⁹ <<http://www.ets.org/cahsee/admin.html>> [as of February 2, 2004].

⁸⁰ Section 1215 was non-substantively amended in May 2003 to change only the article heading and note.

minutes for grades 4 through 12, excluding recess and lunch.⁸¹ State law does not mandate school districts to require teachers to work beyond the minimum school day.

However, if a pupil's IEP requires an additional time accommodation, the extra time would not be a new program or higher level of service because IEP accommodations are required pursuant to federal law, as discussed above.

Therefore, as discussed above, the Commission finds that section 1215 is a new program or higher level of service only if additional time is not specified in the pupil's IEP, and only if the test is administered by a non-teacher certificated employee, such as an employee holding a service credential.⁸²

Identification: Section 1203 of the regulations states that school personnel at the test site are responsible for accurate identification of eligible pupils who take the HSEE through the use of photo-identification, positive recognition by the test administrator, or some equivalent means of identification. Claimant states that this section provides additional support concerning the numerous activities that will be claimed in the parameters and guidelines phase under "test administration" if the Commission approves this test claim.

Prior law did not require accurate identification of eligible pupils who take the HSEE. Therefore, the Commission finds that section 1203 constitutes a new program or higher level of service.

Grade 10 administration: Section 1204⁸³ requires districts to offer the exam in grade 10 only at the spring administration. This regulation merely specifies the timing of the HSEE for 10th graders, so the Commission finds that section 1204 does not constitute a new program or higher level of service.

Record of pupils: Section 1205 requires school districts to maintain a record of all pupils who participate in each test cycle of the HSEE, including the date each section was offered, the names of each pupil who took each section, the grade level of each pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken. Claimant states that the section 1205 activities were not required before the CDE adopted these regulations, creating a new program on school districts.

Section 1206 requires school districts to maintain in each pupil's permanent record the section 1205 information (except grade level). Claimant states that the section 1205 and

⁸¹ Education Code sections 46113, 46115, and 46141.

⁸² Service credential employees include those with a specialization in pupil personnel services (Ed. Code, § 44266), specialization in health (Ed. Code, § 44267 & 44267.5), specialization in clinical rehabilitative services (Ed. Code, § 44268), library media teachers (Ed. Code, § 44269), specialization in administrative services (Ed. Code, § 44270), and limited services credentials (Ed. Code, § 44272).

⁸³ Prior to its May 2003 amendment, section 1204 read "Each pupil in grade 10 shall take the high school exit exam only at the spring administration." Section 1204 also currently requires districts to offer a make-up test for absent pupils at the next test date designated by the SPI or the next test date designated by the school district.

1206 activities were not required before the CDE adopted these regulations, creating a new program on school districts.

Preexisting law classifies schools records into three categories: Mandatory Permanent Public Records, Mandatory Interim Pupil Records, and Permitted Records. Under Mandatory Interim Pupil Records, schools are required to keep “results of standardized tests administered within the preceding three years.”⁸⁴ Under Permitted Records, schools are authorized to keep “standardized test results older than three years.”⁸⁵

The HSEE appears to be a standardized test, which would require it to be kept only for three years as a Mandatory Interim Pupil Record. Section 1206, however, requires that school districts keep HSEE information “in each pupil’s permanent record.” [Emphasis added.] These conflicting regulations are reconciled when the following rule applies:

A specific statutory provision relating to a particular subject, rather than a general statutory provision, will govern in respect to that subject, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.⁸⁶

Section 1206 is the provision that governs the HSEE as the more specific subject, rather than the pupil record regulations that govern the more general “standardized tests.” Thus, section 1206’s requirement to keep HSEE information “in each pupil’s permanent record” is the controlling regulation as to the HSEE.

Because prior law did not require districts to maintain a record of all pupils who participate in each test cycle of the HSEE, and keep HSEE information in the student’s permanent record, the Commission finds that sections 1205 and 1206 constitute a new program or higher level of service.

HSEE district coordination: Section 1209, subdivision (a), requires the superintendent of the district, on or before July 1 of each year, to designate a district employee as the HSEE district coordinator, and requires notifying the publisher of the HSEE of the identity and contact information of that individual. Subdivision (b) specifies the duties of the HSEE district coordinator as follows:

- (1) responding to inquiries of the publisher;
- (2) determining district and school HSEE test material needs;
- (3) overseeing acquisition and distribution of the HSEE;
- (4) maintaining security over the HSEE using the procedures in section 1211 (discussed below);
- (5) overseeing administration of the HSEE;⁸⁷

⁸⁴ California Code of Regulations, title 5, section 432, subdivision (b)(2)(I).

⁸⁵ California Code of Regulations, title 5, section 432, subdivision (b)(3)(B).

⁸⁶ *Praiser v. Biggs Unified School Dist.* (2001) 87 Cal.App.4th 398, 405.

⁸⁷ This was amended in May 2003 to add “in accordance with the manuals or other instructions provided by the test publisher for administering and returning the test.”

- (6) overseeing collection and return of test material and test data to the publisher;
- (7) assisting the publisher in resolving discrepancies in the test information and materials;
- (8) ensuring all exams and materials are received from school test sites no later than the close of the school day on the school day following administration of the HSEE;
- (9) ensuring all exams and materials received from school test sites have been placed in a secure district location by the end of the day following administration of those tests;
- (10) ensuring that all exams and materials are inventoried, packaged, and labeled in accordance with instructions from the publisher and ensuring the materials are ready for pick-up by the publisher no more than five working days following administration of either section in the district; and
- (11) ensuring that the HSEE and test materials are retained in a secure, locked location in the unopened boxes in which they were received from the publisher from the time they are received in the district until the time of delivery to the test sites.

Subdivision (c) of section 1209 requires the district coordinator and superintendent, within seven days of completion of the district testing, to certify to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

Prior law did not require designating a district employee as the HSEE district coordinator, or notifying the HSEE publisher of the identity and contact information of that individual. Nor did prior law specify the HSEE district coordinator's duties. Therefore, the Commission finds that section 1209 constitutes a new program or higher level of service, except that a teacher's time in administering the HSEE is not a new program or higher level of service, even if acting as the HSEE district coordinator.

HSEE test site coordination: Section 1210 requires the superintendent to annually designate a HSEE test site coordinator for each test site from among the employees of the school district. This individual is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE.

Subdivision (b) of section 1210 enumerates the duties of the HSEE test site coordinator, as follows:

- (1) determining site examination and test material needs;
- (2) arranging for test administration at the site;
- (3) training the test administrator(s) and test proctors as provided in the test publisher's manual (but training proctors would not be reimbursable as discussed above);
- (4) completing the Test Security Agreement and Test Security Affidavit prior to the receipt of test materials;

- (5) overseeing test security requirements, including collecting and filing all Test Security Affidavit forms from the test administrators and other site personnel involved with testing;
- (6) maintaining security over the examination and test data as required by section 1211 (see below);
- (7) overseeing the acquisition of examinations from the school district and the distribution of examinations to the test administrator(s);
- (8) overseeing the administration of the HSEE to eligible pupils at the test site;
- (9) overseeing the collection and return of all testing materials to the HSEE district coordinator no later than the close of the school day on the school day following administration of the high school exit examination;
- (10) assisting the HSEE district coordinator and the test publisher in the resolution of any discrepancies between the number of examinations received from the HSEE district coordinator and the number of examinations collected for return to the HSEE district coordinator;
- (11) overseeing the collection of all pupil data as required to comply with sections 1204, 1205, and 1206 of the title 5 regulations;
- (12) Subdivision (b)(12) provides: Within three working days of completion of site testing, the principal⁸⁸ and the [HSEE] test site coordinator shall certify to the [HSEE] district coordinator that the test site has maintained the security and integrity of the examination, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the [HSEE] in the manner and as otherwise required by the publisher.

Prior law did not require the superintendent to annually designate an HSEE test site coordinator for each test site, nor did prior law specify the coordinator's duties. Therefore, the Commission finds that section 1210 (including subdivision (b)(12)) constitutes a new program or higher level of service except that a teacher's time in administering the HSEE is not a new program or higher level of service, even if acting as the HSEE test site coordinator.

Test delivery: Section 1212 requires school districts to deliver the booklets for the HSEE to the school test site no more than two working days before the test is to be administered.⁸⁹ Prior law did not require HSEE booklet delivery, nor specify its timing,

⁸⁸ The principal's activities may or may not be reimbursable, depending on whether the principal is acting as an HSEE district or test-site coordinator or test administrator.

⁸⁹ Section 1212 was non-substantively amended in May 2003 as follows:

~~School districts shall deliver the booklets containing the English/language arts sections of for the high school exit examination to the school test site no more than two working days before that section the test is to be administered, and shall deliver the booklets containing the mathematics section of the examination to the school test site no more than two working days before that section is to be administered.~~

so the Commission finds that section 1212 constitutes a new program or higher level of service.

In summary, the Commission finds the following title 5 HSEE administration regulations constitute new programs or higher levels of service:

- training a test administrator either by a test site or district coordinator (§§ 1200, 1210);
- accurately identifying eligible pupils who take the HSEE through the use of photo-identification, positive recognition by the test administrator, or some equivalent means of identification (§ 1203);
- maintaining a record of all pupils who participate in each test cycle of the HSEE, including the date each section was offered, the names of each pupil who took each section, the grade level of each pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken (§ 1205);
- maintaining in each pupil's permanent record and entering in it prior to the subsequent test cycle the following: the date the pupil took each section of the HSEE, and whether or not the pupil passed each section of the HSEE (§ 1206);
- designating by the district superintendent, on or before July 1 of each year, a district employee as the HSEE district coordinator, and notifying the publisher of the HSEE of the identity and contact information of that individual (§ 1209);
- designating annually by the district superintendent a HSEE test site coordinator for each test site (as defined) from among the employees of the school district who is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE (§ 1210);
- delivering HSEE booklets to the school test site no more than two working days before the test is to be administered (§ 1212).

The Commission also finds the HSEE district coordinator's duties listed in section 1209 and the HSEE test site coordinator's duties listed in section 1210 are new programs or higher levels of service. Although as discussed above, a teacher's time to perform these functions during the school day is not a new program or higher level of service.

Test security/cheating (Cal. Code Regs., tit. 5, §§ 1211 & 1220.): Section 1211 requires the HSEE test site coordinators to ensure that strict supervision is maintained over each pupil taking the HSEE while in the testing room and during breaks. Subdivision (b) of section 1211 states that access to the HSEE materials is limited to pupils taking the exam and employees responsible for administration of the exam.⁹⁰

Subdivision (c) requires all HSEE district and test site coordinators to sign the HSEE Test Security Agreement set forth in subdivision (d). The Agreement set forth in subdivision (d) requires the coordinator to take necessary precautions to safeguard all tests and test

⁹⁰ The May 2003 amendment to section 1211, subdivision (b) added, "and person's assigned by a nonpublic school to implement a pupil's IEPs."

materials by limiting access to persons in the district with a responsible, professional interest in the test's security. The Agreement also requires the coordinator to keep on file the names of persons having access to exam and test materials, and who will be required to sign the HSEE Test Security Affidavit (this is set forth in subd. (g), and is separate from the Agreement). The Agreement further requires coordinators to keep the tests and test materials in a secure, locked location, limiting access to those responsible for test security, except on actual testing dates. Subdivision (e) requires HSEE test site coordinators to deliver the exams and test materials only to those actually administering the exam on the date of testing and only on execution of the HSEE Test Security Affidavit. Subdivision (f) requires persons with access to the exam (including test site coordinators, test administrators, and test proctors)⁹¹ to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit. Subdivision (g) lists the content of the HSEE Test Security Affidavit,⁹² which prohibits the following: divulging the test contents, copying any part of the test, permitting pupils to remove test materials from the test room, interfering with the independent work of any pupil taking the exam, and compromising the security of the test by any means, including those listed. The Affidavit requires keeping the test secure until it is distributed to pupils, and limiting examinee access to the test materials to the actual testing periods.

Subdivision (h) states that all HSEE district and test site coordinators are responsible for inventory control and requires use of appropriate inventory control forms to monitor and track test inventory. Subdivision (i) states that the security of the test materials delivered to the district is the sole responsibility of the district until the materials have been inventoried, accounted for, and delivered to the common or private carrier designated by the publisher. Subdivision (j) states that once materials have been delivered to the district, secure transportation within the district is the responsibility of the district.^{93,94}

⁹¹ The May 2003 amendment to section 1211, subdivision (f) also added, "and persons assigned by a nonpublic school to implement the pupils' IEPs."

⁹² Prior to the May 2003 amendment to section 1211, subdivision (g), this section required the affidavit to be "completed by each test administrator and test proctor." However, the more expansive list in subdivision (f), which included the test site coordinator, was in place in May 2003 and more specifically governs who is required to sign the affidavit.

⁹³ The May 2003 amendment merely clarified section 1211, subdivision (j), and added after the phrase "within a school district" the following: "including to non-public schools, (for students placed through the IEP process), court and community schools, and home and hospital care."

⁹⁴ The May 2003 amendment also added a subdivision (k), which prohibits administration of the HSEE to a pupil in a private home except by a test administrator who signs a security affidavit. Subdivision (k) allows classroom aides to assist in the administration of the test "under the supervision of a credentialed school district employee" provided that the aide signs a security affidavit and does not assist his or her own child. The Commission makes no finding on California Code of Regulations, title 5, section 1211, subdivision (k).

Subdivision (a) of section 1220⁹⁵ of the title 5 regulations requires having the HSEE marked “invalid” and not scoring it for any pupil who is found to have cheated or assisted others in cheating, or who has compromised the security of the HSEE. Subdivision (b) requires that the district notify each eligible pupil before administration of the HSEE of the consequences of cheating in subdivision (a).

Prior law did not require security measures, including Security Agreements and Affidavits, for the HSEE. Therefore, because they are new requirements, the Commission finds the following test security regulations are new programs or higher levels of service within the meaning of article XIII B, section 6:

- for HSEE test site coordinators to ensure that strict supervision is maintained over each pupil being administered the HSEE, both while in the testing room and during any breaks (§ 1211, subd. (a));
- limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (b));
- having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (d) of section 1211 of the title 5 regulations (§ 1211, subd. (c)); (this Agreement is different from the Test Security Affidavit);
- abiding by the Test Security Agreement by limiting access to persons in the district with a responsible, professional interest in the test’s security. The Agreement also requires the coordinator to keep on file the names of persons having access to exam and test materials, and who are required to sign the HSEE Test Security Affidavit, and requires coordinators to keep the tests and test materials in a secure, locked location, limiting access to those responsible for test security, except on actual testing dates (§ 1211, subd. (d)).
- for HSEE test site coordinators to deliver the exams and test materials only to those actually administering the exam on the date of testing and only on execution of the HSEE Test Security Affidavit (§ 1211, subd. (e));
- for persons with access to the HSEE (including test site coordinators and test administrators, but not proctors), to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit in subdivision (g) (§ 1211, subd. (f));
- for HSEE district and test site coordinators to control inventory and use appropriate inventory control forms to monitor and track test inventory (§ 1211, subd. (h));
- take sole responsibility for the security of the test materials delivered to the district until the materials have been inventoried, accounted for, and delivered to the common or private carrier designated by the publisher (§ 1211, subd. (i));
- provide secure transportation within the district for test materials once they have been delivered to the district (§ 1211, subd. (j)); and

⁹⁵ Section 1220 was non-substantively amended in May 2003 to change the note.

- mark the test “invalid” and not score it for any pupil found to have cheated or assisted others in cheating, or who has compromised the security of the HSEE, and notifying each eligible pupil before administration of the HSEE of these consequences of cheating (§ 1220).

Supplemental instruction (Ed. Code, §§ 60851, subd. (e) & 60853, subd. (a).): These sections,⁹⁶ as added by the test claim legislation, provide in pertinent part:

Supplemental instruction shall be provided to any pupil who does not demonstrate sufficient progress toward passing the high school exit examination. To the extent that school districts have aligned their curriculum with the state academic content standards adopted by the State Board of Education, the curriculum for supplemental instruction shall reflect those standards and shall be designed to assist the pupils to succeed on the high school exit examination. *Nothing in this chapter shall be construed to require the provision of supplemental services using resources that are not regularly available to a school or school district*, including summer school instruction provided pursuant to Section 37252. In no event shall any action taken as a result of this subdivision cause or require reimbursement by the Commission on State Mandates. [Emphasis added.]

This statute requires school districts to provide supplemental instruction to pupils not making progress in passing the HSEE, but directs that it be within resources normally available to a school district.

Regularly available and supplemental remedial resources are identified in section 60853, subdivision (a), of the test claim statute as follows:

In order to prepare pupils to succeed on the exit examination, a school district shall use *regularly available resources and any available supplemental remedial resources*, including, but not limited to, funds available for programs established by Chapter 320 of the Statutes of 1998,⁹⁷ Chapter 811 of the Statutes of 1997,⁹⁸ Chapter 743 of the Statutes of 1998,⁹⁹ and funds available for other similar supplemental remedial programs. [Emphasis added.]

Claimant and DOF did not comment on supplemental instruction. Prior law did not require it for pupils not making progress toward passing the HSEE.

These statutes only require providing supplemental services using resources that are regularly available to a school or school district, including summer school instruction provided pursuant to section 37252.

⁹⁶ Section 60851, subdivision (e) is now section 60851, subdivision (f).

⁹⁷ After School Learning and Safe Neighborhoods Partnerships Program, Education Code section 8482 et. seq.

⁹⁸ Student Academic Partnership Program, Education Code section 99300 et. seq.

⁹⁹ This is mandatory summer school, Education Code section 37252.5, which the Commission found to be a reimbursable mandate in the *Pupil Promotion and Retention* test claim (98-TC-19). This provision sunset on January 1, 2003.

In *County of Los Angeles v. Commission on State Mandates*,¹⁰⁰ a case about adding a training course for public safety officers, the court held that the test claim statute had “directed local law enforcement agencies to reallocate their training resources in a certain manner by mandating the inclusion of domestic violence training.”¹⁰¹ Similarly, here the Legislature has required districts to reallocate existing, identified, supplemental or remedial instruction resources to prepare pupils to succeed on the HSEE.

Therefore, the Commission finds that supplemental instruction, as set forth in Education Code, sections 60851, subdivision (e), and 60853, subdivision (a), as added by the test claim statute, is not a new program or higher level of service.¹⁰²

Reporting data to the SPI/CDE (Ed. Code, § 60855, Cal. Code Regs., tit. 5, §§ 1207 & 1225.): Section 60855 of the test claim legislation requires the SPI to contract for a multiyear independent evaluation of the HSEE based on information gathered in field testing and annual administrations. Subdivision (a) specifies the information gathered will include:

- (1) analysis of pupil performance, broken down by grade level, gender, race or ethnicity, and subject matter of the examination, including trends that become apparent over time;
- (2) analysis of the exit examination’s effects, if any, on college attendance, pupil retention, graduation, and dropout rates, including analysis of these effects on the population subgroups described in subdivision (b);
- (3) Analysis of whether the exit examination has or is likely to have differential effects, whether beneficial or detrimental, on population subgroups described in subdivision (b).

Subdivisions (b) through (d) of section 60855 specify other requirements of the assessment. For example, subdivision (d) requires the independent evaluator to report to the Governor, Office of the Legislative Analyst, the SPI, the SBE, the Secretary for Education, and the chairs of the education policy committees in the Legislature in 2000, 2002, and biennial reports by February 1 of even-numbered years following 2002.

Section 1207 of the title 5 regulations requires school districts to provide the publisher of the HSEE with the following information for each pupil tested “for purposes of the analyses required pursuant to Education Code Section 60855:”

¹⁰⁰ *County of Los Angeles v. Commission on State Mandates, supra*, 110 Cal.App.4th 1176, 1194.

¹⁰¹ *Ibid.*

¹⁰² Alternatively, if no new resources are required, the test claim statute should not result in higher costs. It merely redirects effort. In *Department of Finance v. Commission on State Mandates, supra*, 30 Cal.4th 727, 747, the court found that costs incurred in complying with the test claim legislation did not entitle claimants to reimbursement because the state already provided funds to cover the expenses. Therefore, the test claim statutes also do not impose costs mandated by the state.

(1) date of birth, (2) grade level, (3) gender, (4) language fluency and home language, (5) special program participation, (6) participation in free or reduced priced meals, (7) enrolled in a school that qualifies for assistance under Title 1 of the Improving America's School Act of 1994, (8) testing accommodations, (9) handicapping condition or disability, (10) ethnicity, (11) district mobility, (12) parent education, (13) post-high school plans.

Claimant contends that providing information, as requested by the SPI and independent evaluators, is a new program or higher level of service.

DOF commented that the information will be provided and collected as part of the testing process for the HSEE or is already provided through previously required data collections, and that costs associated with the data collections unique to the HSEE will be covered by the amount provided in the budget. Claimant disputed the adequacy of funding, which is analyzed below under issue 3.

Section 60855 does not expressly require school districts to do anything. It imposes evaluation requirements on the SPI and the entity conducting the HSEE evaluation, so the Commission finds it is not a new program or higher level of service.

However, section 1207 of the title 5 regulations does impose reporting requirements on school districts. Therefore, the Commission finds that providing HSEE data to the SPI or independent evaluators or the publisher is a new program or higher level of service. Specifically, the Commission finds that providing the following information on each pupil tested to a publisher or the SPI or an independent evaluator constitutes a new program or higher level of service:

- (1) date of birth;
- (2) grade level;
- (3) gender;
- (4) language fluency and home language;
- (5) special program participation;
- (6) participation in free or reduced priced meals;
- (7) enrolled in a school that qualifies for assistance under Title 1 of the Improving America's School Act of 1994;
- (8) testing accommodations;
- (9) handicapping condition or disability;
- (10) ethnicity;
- (11) district mobility;
- (12) parent education; and
- (13) post-high school plans.

Section 1225, subdivision (a) requires each school district to report to the CDE the number of examinations for each test cycle.¹⁰³ Subdivision (b) requires the district superintendent to certify the accuracy of the information submitted to CDE, and specifies that the report be filed with the SPI within 10 working days of completion of each test cycle in the school district. Prior law did not require districts to report the number of

¹⁰³ Section 1225 was non-substantively amended in May 2003 to change the note.

examinations or to certify the accuracy of information submitted to CDE. Therefore, the Commission finds that section 1225 constitutes a new program or higher level of service. Specifically, the Commission finds that reporting to the CDE the number of examinations for each test cycle within 10 working days of completion of each test cycle in the school district, and the district superintendent certifying the accuracy of this information submitted to CDE is a new program or higher level of service (§ 1225).

Issue 2 Summary

In summary, the Commission finds the following activities are new programs or higher levels of service within the meaning of article XIII B, section 6:

- **Adequate notice:** notifying parents of *transfer* students who enroll after the first semester or quarter of the regular school term that, commencing with the 2003-2004 school year, and each school year thereafter, each pupil completing 12th grade will be required to successfully pass the HSEE. The notification shall include, at a minimum, the date of the HSEE, the requirements for passing the HSEE, and the consequences of not passing the HSEE, and that passing the HSEE is a condition of graduation (Ed. Code, § 60850, subds. (e)(1) & (f)(1));
- **Documentation of adequate notice:** maintaining documentation that the parent or guardian of each pupil received written notification of the HSEE. (Cal. Code Regs., tit. 5, § 1208.);
- **Determining English language skills:** determining whether English-learning pupils possess sufficient English language skills at the time of the HSEE to be assessed with the HSEE (§ 1217.5);
- **HSEE administration:** administration of the HSEE on SPI-designated dates to all pupils in grade 10 beginning in the 2001-2002 school year, and subsequent administrations for students who do not pass until each section of the HSEE has been passed, and administration of the HSEE on SPI-designated dates to pupils in grade 9 only in the 2000-2001 school year who wish to take the HSEE (Ed. Code, § 60851, subd. (a).), except a teacher's time administering the HSEE is not a new program or higher level of service. Administration is limited to the following activities specified in the regulations:
 - training a test administrator either by a test site or district coordinator as provided in the test publisher's manual. (§§ 1200, subd. (g) & 1210, subd. (b)(3));
 - allowing pupils to have additional time to complete the HSEE within the test security limits provided in section 1211, but only if additional time is not specified in the pupil's IEP, and only if this activity is performed by a non-teacher certificated employee, such as a service credentialed staff. (§ 1215);
 - accurately identifying eligible pupils who take the HSEE through the use of photo-identification, positive recognition by the test administrator, or some equivalent means of identification (§ 1203);

- maintaining a record of all pupils who participate in each test cycle of the HSEE, including the date each section was offered, the name and grade level of each pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken (§ 1205);
- maintaining in each pupil's permanent record and entering in it prior to the subsequent test cycle the following: the date the pupil took each section of the HSEE, and whether or not the pupil passed each section of the HSEE (§ 1206);
- designation by the district superintendent, on or before July 1 of each year, of a district employee as the HSEE district coordinator, and notifying the publisher of the HSEE of the identity and contact information of that individual (§ 1209);
- for the district coordinator and superintendent, within seven days of completion of the district testing, to certify to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher (§ 1209); and
- designation annually by the district superintendent a HSEE test site coordinator for each test site (as defined) from among the employees of the school district who is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE (§ 1210).
- Also, the HSEE district coordinator's duties¹⁰⁴ listed in section 1209 and the HSEE test site coordinator's duties¹⁰⁵ listed in section 1210 (except for a teacher's time in administering the HSEE during the school day); and

¹⁰⁴ These duties are: (1) responding to inquiries of the publisher, (2) determining district and school HSEE test material needs, (3) overseeing acquisition and distribution of the HSEE, (4) maintaining security over the HSEE using the procedures in section 1211, (5) overseeing administration of the HSEE, (6) overseeing collection and return of test material and test data to the publisher, (7) assisting the publisher in resolving discrepancies in the test information and materials, (8) ensuring all exams and materials are received from school test sites no later than the close of the school day on the school day following administration of the HSEE, (9) ensuring all exams and materials received from school test sites have been placed in a secure district location by the end of the day following administration of those tests, (10) ensuring that all exams and materials are inventoried, packaged, and labeled in accordance with instructions from the publisher and ensuring the materials are ready for pick-up by the publisher no more than five working days following administration of either section in the district, (11) ensuring that the HSEE and test materials are retained in a secure, locked location in the unopened boxes in which they were received from the publisher from the time they are received in the district until the time of delivery to the test sites; (12) within seven days of completion of

- delivery of HSEE booklets to the school test site no more than two working days before the test is to be administered (§ 1212) are new programs or higher levels of service.
- **Test security/cheating:** Doing the following to maintain test security:
 - for HSEE test site coordinators to ensure that strict supervision is maintained over each pupil being administered the HSEE, both while in the testing room and during any breaks (§ 1211, subd. (a));
 - limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (b));
 - having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (d) of section 1211 of the title 5 regulations (§ 1211, subd. (c));
 - abiding by the Test Security Agreement by limiting access to persons in the district with a responsible, professional interest in the test's security. The Agreement also requires the coordinator to keep on file the names of persons having access to exam and test materials, and who are required to

the district testing, certifying with the Superintendent to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher..

¹⁰⁵ These duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test administrator(s) as provided in the test publisher's manual; (4) completing the Test Security Agreement and Test Security Affidavit prior to the receipt of test materials; (5) overseeing test security requirements, including collecting and filing all Test Security Affidavit forms from the test administrators and other site personnel involved with testing; (6) maintaining security over the examination and test data as required by section 1211; (7) overseeing the acquisition of examinations from the school district and the distribution of examinations to the test administrator(s); (8) overseeing the administration of the HSEE to eligible pupils... at the test site; (9) overseeing the collection and return of all testing materials to the HSEE district coordinator no later than the close of the school day on the school day following administration of the high school exit examination; (10) assisting the HSEE district coordinator and the test publisher in the resolution of any discrepancies between the number of examinations received from the HSEE district coordinator and the number of examinations collected for return to the HSEE district coordinator; (11) overseeing the collection of all pupil ...data as required to comply with sections 1204, 1205, and 1206 of the title 5 regulations; (12) within three working days of completion of site testing, certifying with the principal to the HSEE district coordinator that the test site has maintained the security and integrity of the examination, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner and as otherwise required by the publisher.

sign the HSEE Test Security Affidavit, and requires coordinators to keep the tests and test materials in a secure, locked location, limiting access to those responsible for test security, except on actual testing dates (§ 1211, subd. (d));

- HSEE test site coordinators deliver the exams and test materials only to those actually administering the exam on the date of testing and only on execution of the HSEE Test Security Affidavit (§ 1211, subd. (e));
 - for persons with access to the HSEE (including test site coordinators and test administrators) to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit set forth in subdivision (g) (§ 1211, subd. (f));
 - HSEE district and test site coordinators control of inventory and use of appropriate inventory control forms to monitor and track test inventory (§ 1211, subd. (h));
 - being responsible for the security of the test materials delivered to the district until the materials have been inventoried, accounted for, and delivered to the common or private carrier designated by the publisher (§ 1211, subd. (i));
 - providing secure transportation within the district for test materials once they have been delivered to the district (§ 1211, subd. (j)); and
 - marking the test “invalid” and not scoring it for any pupil found to have cheated or assisted others in cheating, or who has compromised the security of the HSEE, and notifying each eligible pupil before administration of the HSEE of these consequences of cheating (§ 1220).
- **Reporting data to the SPI:** providing HSEE data to the SPI or independent evaluators or the publisher is a new program or higher level of service. Specifically, providing the following information on each pupil tested: (1) date of birth, (2) grade level, (3) gender, (4) language fluency and home language, (5) special program participation, (6) participation in free or reduced priced meals, (7) enrolled in a school that qualifies for assistance under Title 1 of the Improving America’s School Act of 1994, (8) testing accommodations, (9) handicapping condition or disability, (10) ethnicity, (11) district mobility, (12) parent education, (13) post-high school plans. (§ 1207); and reporting to the CDE the number of examinations for each test cycle within 10 working days of completion of each test cycle in the school district, and for the district superintendent to certify the accuracy of this information submitted to CDE (§ 1225) are new programs or higher levels of service.

The Commission also finds that all other test claim legislation is either not subject to article XIII B, section 6, or not a new program or higher level of service.

Issue 3: Does the test claim legislation impose “costs mandated by the state” within the meaning of Government Code sections 17514 and 17556?

In order for the activities listed above to impose a reimbursable, state mandated program under article XIII B, section 6 of the California Constitution, two criteria must apply. First, the activities must impose costs mandated by the state.¹⁰⁶ Second, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines “costs mandated by the state” as follows:

...any 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 XIII B of the California Constitution.

Claimant submitted a declaration in support of the contention that the test claim legislation results in increased costs for school districts. The Superintendent of the Trinity Union High School District declared on January 24, 2001, that the Superintendent is informed and believes that prior to enactment of the test claim legislation, the Trinity Union High School District was not required to engage in the test claim activities. The claimant estimated it has incurred, or will incur, costs significantly in excess of \$200.¹⁰⁷

Costs mandated by the federal government: Government Code section 17556, subdivision (c), precludes reimbursement for a local agency or school district if the test claim statute “implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate....” Government Code section 17513 defines “costs mandated by the federal government” as:

[A]ny increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

As mentioned in the background, NCLB is a federal statute that, among other things, requires statewide annual assessments. As to NCLB and its predecessor, the Improving

¹⁰⁶ *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 835; Government Code section 17514.

¹⁰⁷ Declaration of Bob Lowden, Superintendent, Trinity Union High School District, January 24, 2001. The current statutory standard is \$1000 (Gov. Code, §17564). Claimant estimated it would incur costs of more than \$1000 in its March 13, 2003 declaration submitted with the test claim amendment.

America's Schools Act of 1994, ("IASA") (Pub. Law 103-82), the Commission finds that Government Code section 17556, subdivision (c) does not apply to this test claim. There is no evidence in the test claim statute, legislative history or record that the test claim statute was enacted to implement NCLB. In fact, the NCLB was enacted in 2001, *after* the HSEE enactment in 2000.

Even though NCLB requires annual assessments in math, reading, and by 2007-08, science (20 U.S.C. § 6311 (b)(3)(A)), and assessments of English proficiency (20 U.S.C. § 6311 (b)(7)), they are not costs mandated by the federal government because the HSEE statute required those activities first and not to implement NCLB.

IASA, which predated the HSEE, also required assessments in math and reading (former 20 U.S.C. § 6311 (b)(3)) and also required assessments of English proficiency (former 20 U.S.C. § 6311 (b)(3)(F)(iii) & (b)(5)). As with NCLB, there is no evidence in the test claim statute, legislative history or record that the test claim statute was enacted to implement IASA.

Furthermore, neither NCLB nor IASA constitute costs mandated by the federal government because their applicable requirements are merely conditions on federal funding that neither states nor school districts are required to accept. California is not required to participate in the federal grant programs of NCLB (summarized above under background) or IASA (former 20 U.S.C. § 6311 (a)(1)). Therefore, even though an administration of the HSEE is used to comply with NCLB's assessment programs, such as calculating the Academic Performance Index for state accountability purposes and Adequate Yearly Progress,¹⁰⁸ NCLB is not a federal mandate.

And finally, both NCLB (20 U.S.C. §§ 6575, 7371) and IASA (former 20 U.S.C. § 6311 (f)) state they are not federal mandates "to direct, or control a State...or school's specific instructional content, academic achievement standards and assessments, curriculum, or program of instruction." (20 U.S.C. § 6575.)

Therefore, the Commission finds that Government Code section 17556, subdivision (c) does not apply to this test claim because the test claim legislation does not impose costs mandated by the federal government.

Adequacy of funding: Government Code section 17556, subdivision (e), precludes reimbursement for a local agency or school district if:

[t]he statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agencies or school districts, or **includes additional revenue** that was specifically intended to fund the costs of the state mandate **in an amount sufficient** to fund the cost of the state mandate. [Emphasis added.]

The issue is whether there is adequate additional revenue sufficient to fund the mandate. The test claim legislation includes the following:

¹⁰⁸ <<http://www.cde.ca.gov/statetests/cahsee/background/info.html>> [as of February 2, 2004].

Funding for the administration of the exit examination shall be provided for in the annual Budget Act. The Superintendent of Public Instruction shall apportion funds appropriated for this purpose to enable school districts to meet the requirements of subdivisions (a), (b), and (c). The State Board of Education shall establish the amount of funding to be apportioned per test administered, based on a review of the cost per test.¹⁰⁹

Section 1225, subdivision (c) of the title 5 regulations states that the amount of funding to be apportioned to the district for the HSEE as follows:

The amount of funding ... shall be equal to the product of the amount per administration established by the State Board of Education to enable school districts to meet the requirements of subdivisions (a), (b) and (c) of Education Code section 60851 times the number of tests administered to pupils ... in the school district as determined by the certification of the school district superintendent pursuant to subdivision (b).

The 2003-04 state budget (Stats. 2003, ch. 157) appropriates \$18,267,000 local assistance for the HSEE (Item 6110-113-0001, Schedule (5)), and from the federal trust fund, \$1.1 million (Item 6110-113-0890, Schedule (3)), and another \$1.8 million for exam workbooks (Item 6110-113-0890, Schedule (7)). The 2002-2003 budget (Stats. 2002, ch. 379) appropriated \$18,267,000 local assistance for the HSEE (Item 6110-113-0001, Schedule (6)). The 2001-2002 budget (Stats. 2001, ch. 106) appropriated \$14,474,000 local assistance for the HSEE (Item 6110-113-0001, Schedule (6)). The 2000-2001 budget (Stats. 2000, ch. 52) appropriated \$15.4 million for local administration of the HSEE (Item 6110-113-0001, Schedule (f)).

The state budgets for the past three years also state that the SBE shall annually establish the amount of funding apportioned to districts, and that the amount per test shall not be valid without the approval of DOF.¹¹⁰

DOF argues that the activities in the test claim are fully funded in the budget. DOF's assertions, as stated above, are not supported by "documentary evidence ... authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so."¹¹¹ The Commission relies on the law and the record as presented.

Claimant refutes DOF's assertion. The CDE issued the California High School Exit Examination Apportionment Forms¹¹² to district and county superintendents, stating that each school district will receive \$3 per pupil tested (not per subject tested) regardless of

¹⁰⁹ Education Code section 60851, as added by Statutes 1999x, chapter 1.

¹¹⁰ This is in the 2003-2004 state budget (in Item 6110-113-0001, Schedule (5), Provision 7), the 2002-2003 state budget (in Item 6110-113-0001, Schedule (6), Provision 9) and the 2001-2002 state budget (in Item 6110-113-0001, Schedule (6), Provision 10).

¹¹¹ California Code of Regulations, title 2, section 1183.02, subdivision (c)(1).

¹¹² The 2002-2003 Apportionment Form is on the California Department of Education's website: <[http://www.cde.ca.gov/statetests/cahsee/admin/apportionment /appinfo.pdf](http://www.cde.ca.gov/statetests/cahsee/admin/apportionment/appinfo.pdf)> [as of February 2, 2004].

whether the pupil took one or both portions of the HSEE. Claimant argues that this amount is insufficient to cover the costs of test administration.

Supporting claimant's position is a report analyzing the 1999-2000 state budget in which the Legislative Analyst's Office stated that other states that have implemented high school exit exams incur costs ranging from \$5 to \$20 per student each time the exam is administered.¹¹³ The record, however, is silent as to how the HSEE otherwise compares with other states' high school exit examinations, and other states' eligible costs.

The SBE apportions \$3 per test administration, which is approved by DOF.¹¹⁴ There is a rebuttable presumption that in doing so, both the SBE and DOF officially perform their duties,¹¹⁵ and do so correctly.¹¹⁶ Therefore, the claimant must rebut both presumptions by showing the nonexistence of the presumed fact:¹¹⁷ the sufficiency of HSEE funding apportioned to school districts.

Originally, claimant submitted three declarations in support of its claim, none of which could successfully rebut the presumption that \$3 per administration is sufficient to fund the HSEE. In its February 2004 comments, however, claimant submits six declarations in support of its claim. All the declarations list the activities determined to be a new program or higher level of service in the draft staff analysis, and declare costs of \$1,000 or more in excess of appropriations for performing those activities.

The first declaration, from the Calistoga Joint Unified School District, states it will incur \$1,735 performing the activities in Fiscal Year (FY) 2003-2004, but its total "appropriation" will be \$135.¹¹⁸ Denair Unified School District's declaration states \$2,954 costs for FY 2003-2004, and a total appropriation of \$351 during the same period.¹¹⁹ Similarly, the Grant Joint Union High School District declared \$18,511.27 costs for FY 2002-2003, but \$8,028 in appropriations.¹²⁰ The Ripon Unified School

¹¹³ Legislative Analyst's Office, Report to Joint Legislative Budget Committee, analysis of the 1999-2000 Budget Bill. <http://lao.ca.gov/analysis_1999/education/education_depts2_anl99.html#_1_29> [as of February 2, 2004].

¹¹⁴ As required by the 2003-2004 state budget (in Item 6110-113-0001, Schedule (5), Provision 7), the 2002-2003 state budget (in Item 6110-113-0001, Schedule (6), Provision 9) and the 2001-2002 state budget (in Item 6110-113-0001, Schedule (6), Provision 10).

¹¹⁵ Evidence Code section 664.

¹¹⁶ *Taxara v. Gutierrez*, *supra*, 114 Cal. App. 4th 945, 949.

¹¹⁷ Evidence Code section 606.

¹¹⁸ Declaration of Sylvia Jiminez-Martinez, Counselor and District Test Coordinator, Calistoga Joint Unified School District, February 19, 2004. Claimants' declarations use the term "appropriation" rather than "apportionment."

¹¹⁹ Declaration of Edward E. Parraz, Superintendent, Denair Unified School District, February 19, 2004.

District declared \$3,286 in costs for FY 2003-2004, and \$648 in appropriations.¹²¹ The Riverdale Joint Unified School District declared \$2,997 in costs for FY 2002-2003, versus \$930 in appropriations.¹²² And the Sierra Unified School District declared \$ 3,390 in costs, in contrast to \$648 in appropriations.¹²³

The Commission must base its findings on substantial evidence in the record.¹²⁴

...[S]ubstantial evidence has been defined in two ways: first, as evidence of ponderable legal significance ... reasonable in nature, credible, and of solid value [citation]; and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.¹²⁵

The Commission's finding must be supported by

...all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by "substantial evidence."¹²⁶

Given that the claimant's six declarations show that school districts incur more than \$1,000 in costs in excess of their apportionments, the Commission finds that claimant has presented substantial evidence to successfully rebut the presumption of the sufficiency of the \$3 appropriation. No state agency has presented evidence to demonstrate the sufficiency of the appropriation or to rebut claimant's evidence.

Based on the administrative record, the Commission finds that the HSEE funding apportioned to school districts is not sufficient to cover the costs of HSEE administration. Any HSEE apportionments to school districts would be considered as offsets during the parameters and guidelines phase.

Therefore, the Commission finds that Government Code section 17556, subdivision (e) does not apply to the HSEE statutes because the statutes do not provide for offsetting savings to school districts that result in no net costs, nor do they include additional revenue specifically intended to fund the costs of the mandate in a sufficient amount.

¹²⁰ Declaration of Uve Dahmen, Coordinator of Testing and Assessment, Grant Joint Union High School District, February 18, 2004.

¹²¹ Declaration of Lisa M. Boje, Director of Curriculum and Instruction, Ripon Unified School District, February 12, 2004.

¹²² Declaration of Brooke Campbell, Assistant Principal, Riverdale Joint Unified School District, February 19, 2004.

¹²³ Declaration of A.J. Rempel, Director of Educational Services/Special Projects, Sierra Unified School District, February 13, 2004.

¹²⁴ *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515; Government Code section 17559, subdivision (b).

¹²⁵ *Desmond v. County of Contra Costa* (1993) 21 Cal. App. 4th 330, 335.

¹²⁶ *Ibid.*

In summary, the Commission finds that the test claim legislation imposes costs mandated by the state within the meaning of Government Code sections 17514 and 17556.

CONCLUSION

The Commission finds that the test claim legislation imposes a reimbursable state-mandated program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514 for school districts to perform the following activities:

- **Adequate notice:** notifying parents of *transfer* students who enroll after the first semester or quarter of the regular school term that, commencing with the 2003-04 school year, and each school year thereafter, each pupil completing 12th grade will be required to successfully pass the HSEE. The notification shall include, at a minimum, the date of the HSEE, the requirements for passing the HSEE, and the consequences of not passing the HSEE, and that passing the HSEE is a condition of graduation (Ed. Code, § 60850, subs. (e)(1) & (f)(1).);
- **Documentation of adequate notice:** maintaining documentation that the parent or guardian of each pupil received written notification of the HSEE (Cal. Code Regs., tit. 5, § 1208.);
- **Determining English language skills:** determining whether English-learning pupils possess sufficient English language skills at the time of the HSEE to be assessed with the HSEE (§ 1217.5);
- **HSEE administration:** administration of the HSEE on SPI-designated dates to all pupils in grade 10 beginning in the 2001-2002 school year, and subsequent administrations for students who do not pass until each section of the HSEE has been passed, and administration of the HSEE on SPI-designated dates to pupils in grade 9 only in the 2000-2001 school year who wish to take the HSEE (Ed. Code, § 60851, subd. (a).), except a teacher's time administering the HSEE is not a mandate. Administration is limited to the following activities specified in the regulations:
 - training a test administrator either by a test site or district coordinator as provided in the test publisher's manual. (§§ 1200, subd. (g) & 1210, subd. (b)(3));
 - allowing pupils to have additional time to complete the HSEE within the test security limits provided in section 1211, but only if additional time is not specified in the pupil's IEP, and only if this activity is performed by a non-teacher certificated employee, such as an employee holding a service credential. (§ 1215);
 - accurately identifying eligible pupils who take the HSEE through the use of photo-identification, positive recognition by the test administrator, or some equivalent means of identification (§ 1203);
 - maintaining a record of all pupils who participate in each test cycle of the HSEE, including the date each section was offered, the name and grade

level of each pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken (§ 1205);

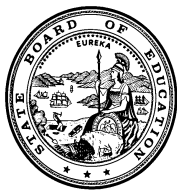
- maintaining in each pupil's permanent record and entering in it prior to the subsequent test cycle the following: the date the pupil took each section of the HSEE, and whether or not the pupil passed each section of the HSEE (§ 1206);
- designation by the district superintendent, on or before July 1 of each year, of a district employee as the HSEE district coordinator, and notifying the publisher of the HSEE of the identity and contact information of that individual (§ 1209);
- for the district coordinator and superintendent, within seven days of completion of the district testing, to certify to CDE that the district has maintained the security and integrity of the exam, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher (§ 1209); and
- designation annually by the district superintendent a HSEE test site coordinator for each test site (as defined) from among the employees of the school district who is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE (§ 1210).
- Also, the HSEE district coordinator's duties¹²⁷ listed in section 1209 and the HSEE test site coordinator's duties¹²⁸ listed in section 1210 (except for a teacher's time in administering the HSEE during the school day); and

¹²⁷ These duties are: (1) responding to inquiries of the publisher, (2) determining district and school HSEE test material needs, (3) overseeing acquisition and distribution of the HSEE, (4) maintaining security over the HSEE using the procedures in section 1211, (5) overseeing administration of the HSEE, (6) overseeing collection and return of test material and test data to the publisher, (7) assisting the publisher in resolving discrepancies in the test information and materials, (8) ensuring all exams and materials are received from school test sites no later than the close of the school day on the school day following administration of the HSEE, (9) ensuring all exams and materials received from school test sites have been placed in a secure district location by the end of the day following administration of those tests, (10) ensuring that all exams and materials are inventoried, packaged, and labeled in accordance with instructions from the publisher and ensuring the materials are ready for pick-up by the publisher no more than five working days following administration of either section in the district, (11) ensuring that the HSEE and test materials are retained in a secure, locked location in the unopened boxes in which they were received from the publisher from the time they are received in the district until the time of delivery to the test sites; (12) within seven days of completion of the district testing, certifying with the Superintendent to CDE that the district has maintained the security and integrity of the exam, collected all data and information as

- delivery of HSEE booklets to the school test site no more than two working days before the test is to be administered (§ 1212).
- **Test security/cheating:** Doing the following to maintain test security:
 - for HSEE test site coordinators to ensure that strict supervision is maintained over each pupil being administered the HSEE, both while in the testing room and during any breaks (§ 1211, subd. (a));
 - limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (b));
 - having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (d) of section 1211 of the title 5 regulations (§ 1211, subd. (c));
 - abiding by the Test Security Agreement by limiting access to persons in the district with a responsible, professional interest in the test's security. The Agreement also requires the coordinator to keep on file the names of persons having access to exam and test materials, and who are required to sign the HSEE Test Security Affidavit, and requires coordinators to keep the tests and test materials in a secure, locked location, limiting access to

required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

¹²⁸ These duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test administrator(s) as provided in the test publisher's manual; (4) completing the Test Security Agreement and Test Security Affidavit prior to the receipt of test materials; (5) overseeing test security requirements, including collecting and filing all Test Security Affidavit forms from the test administrators and other site personnel involved with testing; (6) maintaining security over the examination and test data as required by section 1211; (7) overseeing the acquisition of examinations from the school district and the distribution of examinations to the test administrator(s); (8) overseeing the administration of the HSEE to eligible pupils... at the test site; (9) overseeing the collection and return of all testing materials to the HSEE district coordinator no later than the close of the school day on the school day following administration of the high school exit examination; (10) assisting the HSEE district coordinator and the test publisher in the resolution of any discrepancies between the number of examinations received from the HSEE district coordinator and the number of examinations collected for return to the HSEE district coordinator; (11) overseeing the collection of all pupil ...data as required to comply with sections 1204, 1205, and 1206 of the title 5 regulations; (12) within three working days of completion of site testing, certifying with the principal to the HSEE district coordinator that the test site has maintained the security and integrity of the examination, collected all data and information as required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner and as otherwise required by the publisher.



CALIFORNIA STATE BOARD OF EDUCATION

MARCH 2007 AGENDA

SUBJECT	
California High School Exit Examination (CAHSEE): Proposed Amendments to Title 5 <i>California Code of Regulations</i>	<input checked="" type="checkbox"/> Action <input checked="" type="checkbox"/> Information <input type="checkbox"/> Public Hearing

RECOMMENDATION

The California Department of Education (CDE) recommends that the State Board of Education (SBE):

- Approve the proposed regulations;
- Approve the Initial Statement of Reasons;
- Approve the Notice of Proposed Rulemaking; and
- Direct staff to commence the rulemaking process.

SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

The Title 5 *California Code of Regulations* for the CAHSEE were last revised and approved by the SBE in May 2006. The revisions provided adult students with one additional opportunity to take the CAHSEE per school year and specified the data reporting requirements set forth in *Education Code* Section 60852.4.

In February 2007, the SBE received an Information Memorandum which included the Proposed Regulations. Additional edits are anticipated, and will be reflected in the Proposed Regulations that are submitted as an Item Addendum.

SUMMARY OF KEY ISSUES

The CDE proposes amendments to the Title 5 *California Code of Regulations* for the CAHSEE in response to various needs that have arisen over the course of administering the CAHSEE, as well as current law that requires local educational agencies (LEAs) to report data pertaining to students with disabilities. The primary purposes of the proposed amendments are to:

1. Introduce a fee for LEAs that order excessive test materials.
2. Require LEAs to submit unlisted accommodations and modifications to CDE for review and approval.

SUMMARY OF KEY ISSUES (Cont.)

3. Require charter schools to annually designate whether they will test as part of their chartering district or county office of education.
4. Clarify number of times students may take the CAHSEE in each grade.
5. Permit grade 11 students to take the CAHSEE in successive administrations.
6. Add demographic data elements collected for each student.
7. Specify data reporting requirements and deadlines for exemption and local waiver.

FISCAL ANALYSIS (AS APPROPRIATE)

The Economic and Fiscal Impact Statement will be submitted as an Item Addendum.

ATTACHMENT(S)

- Attachment 1: Notice of Proposed Rulemaking (4 Pages)
- Attachment 2: Initial Statement of Reasons (3 Pages)
- Attachment 3: Proposed Regulations (24 Pages)

An Item Addendum will be provided that includes the fiscal analysis for the proposed amendments to the regulations.

STATE OF CALIFORNIA
Governor

ARNOLD SCHWARZENEGGER,

CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street, Room 5111
Sacramento, CA 95814



NOTICE OF PROPOSED RULEMAKING AMENDMENT TO TITLE 5, CALIFORNIA CODE OF REGULATIONS REGARDING THE CALIFORNIA HIGH SCHOOL EXIT EXAMINATION (CAHSEE)

[Notice published March 23, 2007]

NOTICE IS HEREBY GIVEN that the State Board of Education (SBE) proposes to adopt the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PUBLIC HEARING

California Department of Education staff, on behalf of the SBE, will hold a public hearing beginning at **1:00 p.m. on May 7, 2007**, at 1430 N Street, Room 1101, Sacramento. The room is wheelchair accessible. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the Informative Digest. The SBE requests that any person desiring to present statements or arguments orally notify the Regulations Coordinator of such intent. The SBE requests, but does not require, that persons who make oral comments at the hearing also submit a written summary of their statements. No oral statements will be accepted subsequent to this public hearing.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to:

Debra Strain, Regulations Coordinator
LEGAL DIVISION
California Department of Education
1430 N Street, Room 5319
Sacramento, California 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to regcomments@cde.ca.gov. Comments must be received by the Regulations Coordinator prior to **5:00 p.m. on May 7, 2007**.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the public hearing and considering all timely and relevant comments received, the SBE may adopt the proposed regulations substantially as described in this Notice or may modify the proposed regulations if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified regulation will be available for 15 days prior to its adoption from the Regulations Coordinator and will be mailed to those persons who submit written comments related to this regulation, or who provide oral testimony at the public hearing, or who have requested notification of any changes to the proposal.

AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.

Reference: Sections 37252, 37254, 52052, 52504, 56365, 60810, 60850, 60851, 60852, 60852.4, 60855, 60900 and 602, Education Code; 20 USC 6311; 20 USC 1232g.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

California Code of Regulations, title 5, for the California High School Exit Examination (CAHSEE) serves to guide local educational agencies (LEAs) in the administration of the examination and the reporting of student demographic data to the State. The CDE proposes amendments to the California Code of Regulations, title 5, for the CAHSEE in response to various needs that have arisen over the course of administering the CAHSEE, as well as current law that requires LEAs to report data pertaining to students with disabilities. The primary purposes of the proposed amendments are to:

1. Introduce a fee for LEAs that order excessive test materials.
2. Require LEAs to submit unlisted accommodations and modifications to CDE for review and approval.
3. Require charter schools to annually designate whether they will test as part of their chartering district or county office of education.
4. Clarify number of times students may take the CAHSEE in each grade.
5. Permit grade 11 students to take the CAHSEE in successive administrations.
6. Add demographic data elements collected for each student.
7. Specify data reporting requirements and deadlines for exemption and local waiver.

DISCLOSURES REGARDING THE PROPOSED REGULATION

The SBE has made the following initial determinations:

Mandate on local agencies or school districts: TBD

Cost or savings to state agencies: TBD

Costs to any local agencies or school districts for which reimbursement would be required pursuant to Part 7 (commencing with section 17500) of division 4 of the Government Code: TBD

Other non-discretionary cost or savings imposed on local educational agencies: TBD

Cost or savings in federal funding to the state: TBD

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: TBD

Cost impacts on a representative private person or businesses: The SBE is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not 1) create or eliminate jobs within California; 2) create new businesses or eliminate existing businesses within California; or 3) affect the expansion of businesses currently doing business within California.

Effect on housing costs: None

Effect on small businesses: The proposed regulations would not have a significant adverse economic impact on any business because they relate only to schools and not to small business practices.

CONSIDERATION OF ALTERNATIVES

The SBE must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SBE, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

The SBE invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

CONTACT PERSONS

Inquiries concerning the content of this regulation may be directed to:

Jessica Valdez, Education Programs Consultant
High School Exit Exam Office
California Department of Education
1430 N Street, Suite 5408

Sacramento, CA 95814
Telephone: 916-319-0354
E-mail: jvaldez@cde.ca.gov

Inquiries concerning the regulatory process may be directed to the Regulations Coordinator or Connie Diaz, Regulations Analyst, at 916-319-0860.

INITIAL STATEMENT OF REASONS AND INFORMATION

The SBE has prepared an initial statement of reasons for the proposed regulation and has available all the information upon which the proposal is based.

TEXT OF PROPOSED REGULATION AND CORRESPONDING DOCUMENTS

Copies of the exact language of the proposed regulation and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Regulations Coordinator. These documents may also be viewed and downloaded from the CDE's Web site at <http://www.cde.ca.gov/re/lr/rr>.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the Regulations Coordinator.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the Regulations Coordinator.

REASONABLE ACCOMMODATION FOR ANY INDIVIDUAL WITH A DISABILITY

Pursuant to the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Unruh Civil Rights Act, any individual with a disability, who requires reasonable accommodation to attend or participate in a public hearing on proposed regulations, may request assistance by contacting Jessica Valdez, High School Exit Exam Office, 1430 N Street, Suite 5408, Sacramento, CA, 95814; telephone, 916-319-0354; fax, 916-319-0969. It is recommended that assistance be requested at least two weeks prior to the hearing.

Initial Statement of Reasons

SPECIFIC PURPOSE OF THE REGULATION

California Code of Regulations, title 5, for the California High School Exit Examination (CAHSEE) serves to guide local educational agencies (LEAs) in the administration of the examination and the reporting of student demographic data to the State.

NECESSITY/RATIONALE

The California Department of Education (CDE) proposes amendments to these regulations in response to various needs, as specified below, that have arisen over the course of administering the CAHSEE, as well as current law that requires LEAs to report data pertaining to students with disabilities.

Section 1200 – The amendments to this section alphabetizes definitions for easy reference and will add definitions for the following terms: “grade 10 census administration,” “opportunity,” and “excessive materials.”

Section 1202 – The section requires LEAs to pay for ordering excessive test materials.

Section 1204 – The amendments to this section clarifies that grade 10 students are restricted to taking each section of the CAHSEE once per school year, during either the grade 10 census administration or during the district-designated grade 10 make up administration.

Section 1204.5 – The amendments to this section clarify the number of times students may take the CAHSEE in each grade and will permit grade 11 students to take the exam in successive administrations.

Section 1207(b) – The amendments to this subdivision remove redundant information within the subdivision and adds demographic data elements that LEAs must provide for all grade 10, 11, and 12 pupils tested.

Section 1207(d) – The addition of this subdivision specifies the demographic data elements that LEAs must provide for all adult students tested.

Section 1207.1 – The amendment to this section extends the deadline for LEAs to provide CDE with data regarding the local waiver as required by *Education Code* section 60851.

Section 1207.2 – The amendments to this section extend the deadline for LEAs to provide CDE with data regarding the exemption as required by *Education Code* section 60852.4 and specifies the data elements that must be provided to CDE.

Section 1209 – The amendments to this section: 1) eliminate redundant information; 2) require the LEA superintendent to provide the test contractor with the phone number

and e-mail address of the designated district coordinator; 3) require the district coordinator to train a test site coordinator at each test site; 4) extend the deadline for LEAs to notify the test contractor of the selected administration dates for the coming school year; 5) require charter schools to annually designate whether they will test as part of their chartering district or county office of education, and designating the charter school as part of the district or county office of education if the charter school does not designate itself by the specified deadline; 6) clarify that an answer document must be submitted for every grade 10 student at the time of the grade 10 census administration; and 7) require the district coordinator to immediately notify the test contractor of suspected security breaches.

Section 1210 – The amendments to this section eliminate redundant information, eliminate the option for the test site principal to act as the test site coordinator without being officially designated as the test site coordinator, and require the test site coordinator to inventory test materials upon receipt from, and prior to return to, the school district.

Section 1211 – The amendments to this section eliminate redundant information.

Section 1211.5 – The amendments to this section eliminate redundant information and will require district and test site coordinators to certify they will ensure that all test examiners are trained to administer the examination in compliance with the test administration manuals.

Section 1215 – The amendments to this section clarify that highlighting is permitted in test booklets as a test variation and eliminate the option for LEAs to submit unlisted test variations to CDE for review since amendments to section 1218 now require LEAs to submit unlisted test variations to CDE for approval.

Section 1215.5 – The amendment to this section eliminate the option for LEAs to submit unlisted test variations to CDE for review since amendments to section 1218 now require LEAs to submit unlisted test variations to CDE for approval.

Section 1216 – The amendments to this section clarify the use of modifications and eliminate the option for LEAs to submit unlisted test variations to CDE for review since amendments to section 1218 now require LEAs to submit unlisted test variations to CDE for approval.

Section 1217 – The amendments to this section allow English learners to use translation glossaries that contain primary language to English words and phrases and prohibit the inclusion of parts of speech in the glossaries.

Section 1218 – The amendments to this section require LEAs to submit unlisted test variations to CDE for review and approval.

Section 1225(b)(2) – The addition of this subdivision requires each LEA superintendent to certify that all examinations during the prior fiscal year were administered in

compliance with the California Code of Regulations, title 5, for the LEA to be eligible for apportionment payment.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The State Board of Education (SBE) did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of these regulations.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by the SBE.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The SBE has not identified any alternatives that would lessen any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations would not have a significant adverse economic impact on any business because they relate only to school districts.

1

Title 5. EDUCATION

2

Division 1. California Department of Education

3

Article 2. High School Exit Examination Administration

4

Subchapter 6. California High School Exit Examination

5

Article 1. General

6

§ 1200. Definitions.

7

For the purposes of the high school exit examination, the following definitions shall apply:

8

9

~~(a)(f)~~ "~~Department CDE~~" is the California Department of Education.

10

~~(b)(f)~~ "District coordinator" is an employee of the school district designated by the superintendent of the district to oversee the administration of the high school exit examination within the district.

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~~(c)(e)~~ "Eligible adult student" is a person enrolled in an adult school operated by a school district who is working to attain a high school diploma and has not passed both the English/_language arts section and the mathematics section of the high school exit examination. This term does not include pupils who are concurrently enrolled in high school and adult school.

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(d) "Eligible pupil" is a person enrolled in a California public school in grade 10, 11, or 12, including those pupils placed in a nonpublic school through the Individualized Education Program (IEP) process pursuant to Education Code Section 56365, who has not passed both the English/_language arts section and the mathematics section of the high school exit examination.

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23

~~(e)(m)~~ "Examination" is the high school exit examination.

24

(f) "Excessive materials" is the difference between the sum of the number of tests scored and 90 percent of the tests ordered by the school district.

25

26

~~(g)(e)~~ "Grade" for the purposes of the high school exit examination means the grade assigned to the pupil by the school district at the time of testing.

27

28

(h) "Grade 10 census administration" is the administration of the high school exit examination during which all eligible pupils in grade 10 are required to take the examination.

29

30

1 (i) "Opportunity" shall refer to a chance an eligible pupil or eligible adult student is
2 provided to take the section(s) of the examination not yet passed.

3 (j)(k) "School district" includes unified and high school districts, county offices of
4 education, any charter school that for assessment purposes does not elect to be part of
5 the school district or county office of education that granted the charter, and any charter
6 school chartered by the State Board of Education (SBE).

7 (k)(j) "Scribe" is an employee of the school district, or a person assigned by a
8 nonpublic school to implement a pupil's IEP and is required to transcribe an eligible
9 pupil's or eligible adult student's responses to the format required by the examination.
10 No A parent or guardian is ~~not~~ eligible to be a scribe for their own pupil or student.

11 (l)(a) "Section," "portion," and "part(s)" of the examination shall refer to either the
12 English/language arts section of the high school exit examination or the mathematics
13 section of the high school exit examination.

14 (m)(p) "Significant medical emergency" is a significant accident, trauma, or illness
15 (mental or physical) that precludes a pupil in grade 10 from taking the examination
16 ~~(CAHSEE)~~. An accident, trauma, or illness is significant if the pupil has been
17 determined by a licensed physician to be unable to participate in the examination.

18 (n)(b) "Test administration" is the period of time starting with the delivery of the
19 secure testing materials to the district and ending with the return shipment of materials
20 to the test contractor, and includes the period of time during which eligible pupils or
21 eligible adult students take one or both sections of the examination.

22 (o)(h) "Test examiner" is an employee of a school district, or a person assigned by a
23 nonpublic school to implement a student's IEP, who has received training specifically
24 designed to prepare him or her to administer the high school exit examination.

25 (p)(r) "Test materials" are materials necessary to administer the examination,
26 including but not limited to test manuals, pupil test booklets, answer documents, special
27 test versions, and other materials developed and provided by the test contractor.

28 (q)(i) "Test proctor" is an employee of a school district, or a person assigned by a
29 nonpublic school to implement a pupil's IEP, who has received training specifically
30 designed to prepare him or her to assist the test examiner in administration of the high
31 school exit examination.

1 ~~(r)~~(g) "Test site coordinator" is an employee of the school district designated by the
 2 district coordinator or the superintendent, or a person assigned by a nonpublic school
 3 to implement a student's IEP, who oversees the administration of the high school exit
 4 examination at each test site at which the examination is given.

5 ~~(s)~~(t) "Variation" is a change in the manner in which a test is presented or
 6 administered, or in how a test taker is allowed to respond, and includes, but is not
 7 limited to, accommodations and modifications as defined in Education Code section
 8 60850.

9 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 52504,
 10 56365, 60850 and 60851, Education Code; and 20 USC Section 6311.

11

12 **Article 2. High School Exit Examination Administration**

13 **§ 1202. Excessive Materials Costs.**

14 The school district is responsible for the cost of excessive materials ordered by the
 15 school district. In no case shall the cost to the school district for excessive materials
 16 exceed the amount per test booklet and accompanying material that is paid to the
 17 contractor by the CDE as part of the contract with the test contractor for the current
 18 year billed.

19 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60851,
 20 Education Code.

21

22 **§1204. Grade 10 Testing.**

23 All eligible grade 10 pupils shall only take each section of the examination once per
 24 school year while in grade 10 during either the grade 10 census administration or the
 25 district-designated grade 10 make up administration.

26 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60851,
 27 Education Code.

28

29 **§ 1204.5 Grades 11 and 12 and Adult Student Testing Dates.**

30 (a) School districts shall provide eligible pupils in grade 11 at least two opportunities
 31 per school year to take the section(s) of the examination not yet passed. Eligible pupils

1 in grade 11 ~~who have not yet passed one or both sections of the examination shall~~
2 ~~have up to two opportunities per year to~~ may take the section(s) of the examination not
3 yet passed up to two times per school year and may take the examination in
4 successive administrations and ~~may elect to take the examination during these~~
5 ~~opportunities.~~

6 (b) School districts shall provide eligible pupils in grade 12 at least three
7 opportunities per school year to take the section(s) of the examination not yet passed.
8 Eligible pupils in grade 12 shall ~~have up to three opportunities to take the section(s) of~~
9 ~~the examination not yet passed. The district shall offer either three opportunities during~~
10 ~~grade 12 or two opportunities in grade 12 and one opportunity in the year following~~
11 ~~grade 12 to~~ may take the section(s) of the examination not yet passed up to three times
12 per school year and may take the examination in successive administrations. Eligible
13 pupils in grade 12 ~~may elect to take the examination during district provided~~
14 ~~opportunities.~~

15 (c) School districts shall provide eligible adult students at least three opportunities
16 per school year to take the section(s) of the examination not yet passed. Eligible adult
17 students ~~may~~ shall ~~have up to three opportunities per year to take the section(s) of the~~
18 examination not yet passed up to three times per school year and may take the
19 examination in successive administrations and ~~may elect to take the examination~~
20 ~~during these opportunities.~~

21 (d) ~~Districts shall not test eligible pupils in grade 11 in successive administrations~~
22 ~~within a school year.~~ Eligible pupils in grades 11 and 12 and eligible adult students
23 should be offered appropriate remediation or supplemental instruction before being
24 retested.

25 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 37252,
26 37254 and 60851, Education Code.

27
28 **§ 1205. School District Information.**

29 School districts shall maintain a summary data file, as set forth below, of all pupils
30 who participate in each test administration of the examination. This summary data file

1 shall include the following information for (1) the English/_language arts section, and (2)
2 the mathematics section, for each test administration:

3 (a) The date on which each section of the examination was taken.

4 (b) The full name of each pupil who took each section of the examination.

5 (c) The grade level of each pupil at the time each section of the examination was
6 taken.

7 (d) Whether each pupil has satisfied the requirement to successfully pass the
8 examination for each section or sections of the examination taken.

9 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60851,
10 Education Code.

11

12 **§1207. Data for Analysis of Pupil Performance.**

13 (a) Each school district shall provide the test contractor with an answer document
14 with complete demographic information for each grade 10 pupil enrolled at the time of
15 the grade 10 census administration.

16 ~~(b) Each school district shall provide the data collected pursuant to section 1205 to~~
17 ~~the test contractor of the examination for purposes of the reporting required for the~~
18 ~~independent evaluation, the Public Schools Accountability Act, and No Child Left~~
19 ~~Behind. In addition, Each school district shall provide the following demographic~~
20 information for each grade 10, 11, and 12 pupil tested:

21 (1) Pupil's full name

22 (2) Date of birth

23 (3) Grade level

24 (4) Gender

25 (5) English proficiency ~~and~~

26 ~~(6) P~~primary language

27 ~~(7)(6)~~ Date of English proficiency reclassification

28 ~~(8)~~ English learner enrollment date

29 ~~(9)~~ Use of English learner test variations

30 ~~(10)(7)~~ If R-FEP pupil scored proficient or above on the California English-Language
31 Arts Standards Test three ~~(3)~~ times since reclassification

- 1 ~~(11)~~(8) Program participation
- 2 ~~(9) Participation in free or reduced priced meals~~
- 3 (12) National School Lunch Program (NSLP) participation
- 4 ~~(13)~~(10) Use of accommodations or modifications during the examination
- 5 ~~(14)~~(11) Primary disability code
- 6 (15) Special Education Exit Date
- 7 ~~(16)~~(12) Participation in California Alternate Performance Assessment (CAPA)
- 8 ~~(17)~~(13) Ethnicity
- 9 ~~(14) School mobility~~
- 10 ~~(18)~~(15) School and district CBEDS enrollment
- 11 ~~(19)~~(16) Parent or guardian education level
- 12 ~~(20)~~(17) District and county residence for students with disabilities
- 13 ~~(18) California School Information Services (CSIS) Student Number, once assigned.~~
- 14 ~~(19) Post-high school plans~~
- 15 (21) Statewide Student Identifier (SSID)
- 16 (22) For Alternative Schools Accountability Model (ASAM) schools, whether the
- 17 student has been enrolled in the school less than 90 school days prior to testing.
- 18 (23) Nonpublic nonsectarian school (NPS) code
- 19 (24) Independent evaluator survey response data
- 20 (c) In addition to the demographic data required to be reported in section 1207(b),
- 21 school districts may report if a grade 10 pupil is not tested due to a significant medical
- 22 emergency.
- 23 (d) Each school district shall provide the following demographic information for each
- 24 adult student tested:
- 25 (1) Student's full name
- 26 (2) Date of birth
- 27 (3) Adult student status
- 28 (4) Gender
- 29 (5) Use of accommodations or modifications during the examination
- 30 (6) Use of English learner test variations
- 31 (7) Primary disability

1 (8) Ethnicity

2 (9) District and county of residence for students with disabilities

3 ~~(e)~~ The demographic information is for the purposes of aggregate analyses only
4 and shall be provided to the test contractor and collected as part of the testing
5 materials for the examination.

6 ~~(f)~~ School districts shall provide the same information for each eligible pupil
7 enrolled in an alternative or off-campus program, or for pupils placed in nonpublic
8 schools, as is provided for all other eligible pupils.

9 ~~(g)~~ If the information required by section 1207(b) or 1207(d) is incorrect, the
10 school district shall provide corrected information within the time schedule specified by
11 the test contractor or may enter into a separate agreement with the contractor to have
12 the district's data file corrected. Any costs for correcting the student data pursuant to a
13 separate agreement between the school district and the test contractor shall be the
14 school district's responsibility.

15 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 52052,
16 60855 and 60900, Education Code; ~~and~~ 20 USC ~~Section~~ 6311.

17

18 **§ 1207.1. Data for Analysis of Local Waiver Process for Pupils with Disabilities.**

19 By ~~December~~ July 31 of each year, each school district shall provide to the
20 department CDE the following information from the prior school year pursuant to
21 Education Code section 60851:...

22 ...

23 (e) The number of pupils or adult students that graduated ~~during the prior school~~
24 ~~year~~ as a result of having been granted a waiver on one or both portions of the
25 examination.

26 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60851,
27 Education Code.

28

29 **§ 1207.2. Data for Analysis of Exemption for Pupils with Disabilities in the Class**
30 **of 20067.**

1 (a) By ~~July 1, 2006~~ February 1, 2008, each school district and state special school
2 shall provide the following information to the ~~department~~ CDE for each pupil in the
3 class of ~~2006~~7 who has an IEP or Section 504 plan dated on or before July 1, ~~2005~~6,
4 that indicates that the pupil is scheduled to graduate in ~~2006~~7, but who has not yet
5 passed both sections of the examination:

6 (1) Primary disability code.

7 (2) Percent of time spent in general education.

8 (3) Anticipated graduation date as specified in the IEP or Section 504 plan.

9 (4) Whether the pupil satisfied all other state and local graduation requirements.

10 (5) The month and year of each attempt to pass the examination with the
11 accommodations and modifications, if any, specified in the IEP or Section 504 plan.

12 (6) Type of remedial or supplemental instruction program completed.

13 (7) The month and year of each attempt to pass the examination after completing a
14 remedial or supplemental instruction program.

15 (8) The date on which the pupil, or the parent or legal guardian if the student is a
16 minor, was notified ~~acknowledged~~ in writing that the pupil is entitled to receive free
17 appropriate public education up to and including the academic year in which the pupil
18 reaches 22 years of age, or until the pupil receives a high school diploma, whichever
19 occurs first.

20 (9) Whether the pupil received a waiver from the requirement to pass the
21 examination pursuant to Education Code section 60851(c).

22 (10) Whether the pupil satisfied the criteria set forth in Education Code section
23 60852.~~43~~(a).

24 (11) Whether the pupil received a diploma pursuant to Education Code section
25 60852.~~43~~(a).

26 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60852.~~43~~,
27 Education Code.

28
29 **§ 1207.5 Reporting Test Scores.**

30 No aggregate or group scores or reports that are compiled pursuant to Education
31 Code section 60851 shall be reported electronically, in hard copy, or in other media, to

1 any audience other than the school or school district where the pupils were tested,
2 except the independent evaluator as set forth in Education Code section 60855, if the
3 aggregate or group scores or reports are composed of ten (10) or fewer individual pupil
4 scores. In each instance in which no score is reported for this reason, the notation shall
5 appear: "The number of pupils in this category is too small for statistical accuracy or
6 privacy protection." In no case shall any group score be reported that would
7 deliberately or inadvertently make public the score or performance of any individual
8 student.

9 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 60851
10 and 60855, Education Code; and 20 USC Section 1232g.

11
12 **§ 1209. High School Exit Examination District Coordinator.**

13 (a) On or before July 1 of each school year, the superintendent of each school
14 district shall designate from among the employees of the school district a district
15 coordinator. The superintendent shall notify the test contractor of the identity and
16 contact information for the district coordinator, including the district coordinator's phone
17 number and. ~~At the discretion of the superintendent, the contact information may~~
18 ~~include an electronic~~ email address.

19 (b) The district coordinator or the school district superintendent or his or her
20 designee, shall be available throughout the year and shall serve as the liaison between
21 the school district and the test contractor and the school district and the ~~Department~~
22 CDE for all matters related to the examination.

23 (c) The district coordinator or the school district superintendent or his or her
24 designee shall oversee the administration of the examination to eligible pupils or
25 eligible adult students, in accordance with the manuals or other instructions provided by
26 the test contractor for administering and returning ~~the examinations and~~ all test
27 materials including, but not limited to, the following responsibilities:

28 (1) Responding to correspondence and inquiries from the test contractor and the
29 ~~Department~~ CDE in a timely manner and as provided in the test contractor's
30 instructions and these regulations.

1 (2) Advising the test contractor of the selected administration dates for the coming
2 school year by March ~~November~~ 1 of the prior school year.

3 (3) For charter schools, advising the test contractor for the coming school year by
4 March 1 of the prior school year of whether the school, for assessment purposes, does
5 not elect to be part of the school district or county office of education that granted the
6 charter. If the charter school does not advise the test contractor by March 1, the charter
7 school will be designated as part of the school district or county office of education that
8 granted the charter.

9 ~~(4)(3)~~ Determining school district and individual school examination and test
10 material needs in conjunction with the test contractor using current enrollment data.

11 ~~(5)(4)~~ Completing, and filing, and adhering to the a Test Security Agreement as set
12 forth in section 1211.5 with the test contractor prior to the receipt of ~~examinations and~~
13 test materials. A copy of the Test Security Agreement shall be maintained at the district
14 office for 12 months from the date signed.

15 ~~(6)(5)~~ Identifying and training a test site coordinator for each test site and securing a
16 signed Test Security Agreement from each test site coordinator in the district and from
17 any test examiner at a nonpublic school in which a pupil has been placed by the
18 district.

19 ~~(7)(6)~~ Ordering sufficient examinations and test materials for eligible pupils and
20 eligible adult students, including completing an electronic data file containing the data
21 set forth in section 1207, if the district chooses to have the test contractor pre-identify
22 answer documents.

23 ~~(8)(7)~~ Overseeing the collection of all pupil data as required to comply with sections
24 1205, 1206, and 1207.

25 ~~(9)(8)~~ Ensuring that the examinations and test materials are retained in a secure,
26 locked location, in the sealed boxes in which they were received from the test
27 contractor, from the time they are received in the school district until the time they are
28 opened for inventory and delivery to ~~delivered to the~~ test sites.

29 ~~(10)(9)~~ Ensuring delivery of examinations and test materials to the test sites no
30 more than five ~~(5)~~ working days before the examination is to be administered.

1 ~~(11)(10)~~ Ensuring that all ~~examinations and~~ test materials are received from test
2 sites no later than the second day following the administration of the examination.

3 ~~(12)(11)~~ Ensuring that all ~~examinations and~~ test materials received from test sites
4 have been placed in a secure school district location upon receipt.

5 ~~(13)(12)~~ Ensuring that all ~~examinations and~~ test materials are inventoried,
6 packaged, and labeled in accordance with instructions from the test contractor. The
7 ~~examinations and~~ test materials shall be ready for pick-up by the test contractor at a
8 designated location in the school district no more than five ~~(5)~~ working days following
9 administration of the examination in the school district.

10 ~~(14)(13)~~ Ensuring that an answer document is submitted for scoring for each eligible
11 pupil in grade 10 enrolled in the district at the time of the grade 10 census
12 administration on the testing dates.

13 ~~(15)(14)~~ Assisting the test contractor and the ~~Department~~ CDE in the resolution of
14 any discrepancies in the test information and materials, including but not limited to, pre-
15 identification files and the number of examinations received from the test contractor
16 and the number of examinations collected for return to the test contractor.

17 ~~(16)(15)~~ Immediately notifying the test contractor of any testing irregularities,
18 security breaches, or suspected security breaches ~~or testing irregularities~~ in the district
19 before, during, or after the administration of the examination.

20 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60851,
21 Education Code; and 20 USC ~~Section~~ 6311.

22
23 **§ 1210. High School Exit Examination Test Site Coordinator.**

24 (a) Annually, the district coordinator or the superintendent of the school district shall
25 designate a test site coordinator for each test site. The designee shall be an employee
26 of the school district, or the person assigned by a nonpublic school to implement a
27 student's IEP.

28 (b) The test site coordinator ~~or the site principal or his or her designee,~~ shall be
29 available to the district coordinator for the purpose of resolving issues that arise as a
30 result of the administration of the examination.

1 (c) The test site coordinator ~~or the site principal~~ shall oversee the administration of
2 the examination to eligible pupils or eligible adult students at the test site in accordance
3 with the manuals or other instructions provided by the test contractor for administering
4 the examination including, but not limited to, the following responsibilities:

5 (1) Determining test site examination and test material needs.

6 (2) Arranging for test administration at the test site.

7 (3) Training the test examiner(s), test proctors, and scribes as provided in the test
8 contractor's manual.

9 (4) Completing a Test Security Agreement and Test Security Affidavit as set forth in
10 section 1211.5 prior to the receipt of ~~examinations~~ and test materials.

11 (5) Overseeing test security requirements, including collecting and delivering all
12 completed Test Security Affidavit forms to the school district office from the test
13 examiners and other site personnel involved with testing. All Test Security Affidavits
14 shall be maintained for 12 months from the date signed.

15 (6) Overseeing the acquisition and inventory of ~~examinations~~ test materials from the
16 school district and the distribution of ~~examinations~~ test materials to the test
17 examiner(s).

18 (7) Maintaining security over the examination and test data as follows:

19 (A) Delivering the ~~examinations~~ and test materials only to those persons who have
20 ~~executed~~ signed the Test Security Affidavit and who are administering the examination
21 on the date of testing.

22 (B) Ensuring that strict supervision is maintained over each eligible pupil or eligible
23 adult student who is being administered the examination both while the eligible pupil or
24 eligible adult student is in the room in which the examination is being administered and
25 during any period in which the eligible pupil or eligible adult student is, for any purpose,
26 granted a break during testing.

27 (8) Overseeing the collection of all pupil data as required to comply with sections
28 1205, 1206, and 1207 ~~of these regulations~~.

29 (9) Overseeing the collection, inventory, and return of all ~~testing~~ materials to the
30 district coordinator no later than the day following administration of the examination.

1 (10) Ensuring that an answer document is submitted for scoring for each eligible
2 pupil in grade 10 enrolled in the test site on the testing dates.

3 (11) Assisting the district coordinator and the test contractor in the resolution of any
4 discrepancies between the number of examinations received from the district
5 coordinator and the number of examinations collected for return to the district
6 coordinator.

7 (12) Immediately notifying the district coordinator of any testing irregularities,
8 security breaches, or suspected security breaches ~~or testing irregularities~~ at the test
9 site before, during, or after the administration of the examination.

10 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60851,
11 Education Code; and 20 USC Section 6311.

12
13 **§ 1211. High School Exit Examination Test Security.**

14 (a) Access to the examination materials is limited to eligible pupils ~~taking the~~
15 ~~examination for the purpose of graduation from high school~~ and eligible adult students
16 taking the examination for the purpose of obtaining a public high school diploma of
17 graduation, and those who have signed the security affidavit or agreements, including
18 employees of a school district directly responsible for administration of the examination,
19 and persons assigned by a nonpublic school to implement students' IEPs.

20 (b) To maintain the security of the examination, all school district and test site
21 coordinators are responsible for inventory control and shall use appropriate inventory
22 control forms to monitor and track test inventory.

23 (c) The security of the ~~examinations and~~ test materials that have been delivered to
24 the school district is the sole responsibility of the school district until all ~~examinations~~
25 ~~and~~ test materials have been inventoried, accounted for, and delivered to the common
26 or private carrier designated by the test contractor.

27 (d) Once test materials have been delivered to the school district, secure
28 transportation of the ~~examinations and~~ test materials within a school district including to
29 nonpublic schools (for students placed through the IEP process), court and community
30 schools, and home and hospital care, is the responsibility of the school district.

(e) No examination may be administered in a home or hospital except by a test examiner. No examination shall be administered to an eligible pupil by the parent or guardian of that pupil. This subdivision does not prevent classroom aides from being a test proctor and assisting in the administration of the examination under the supervision of a test examiner provided that the classroom aide does not assist his or her own child and that the classroom aide signs the Test Security Affidavit as set forth in section 1211.5.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 60850 and 60851, Education Code.

§ 1211.5. High School Exit Examination Test Security Forms.

(a) All district and test site coordinators shall sign the California High School Exit Examination Test Security Agreement set forth in subdivision (b).

(b) The California High School Exit Examination Test Security Agreement shall be as follows:

CALIFORNIA HIGH SCHOOL EXIT EXAMINATION TEST SECURITY AGREEMENT

(1) I will ensure that all test examiners are trained to administer the examination in compliance with the test administration manuals.

~~(2)~~(4) I will take all necessary precautions to safeguard all ~~examinations and~~ test materials by limiting access to persons within the school district with a responsible, professional interest in the examination's security.

~~(3)~~(2) I will not disclose, or allow to be disclosed, the contents of the examination.

~~(4)~~(3) I will keep on file the names of persons having access to ~~examinations and~~ test materials. All persons having access to the materials shall be required to sign the California High School Exit Examination Test Security Affidavit that will be kept on file in the school district office.

~~(5)~~(4) I will keep the ~~examinations and~~ test materials in a secure, locked location, limiting access to only those persons responsible for test security, except on actual testing dates as provided in California Code of Regulations, ~~¶~~title 5, D~~ivision 1,~~
chapter 2, S~~ubchapter 6.~~

1 ~~(6)(5)~~ I will not copy any part of the examination or test materials unless necessary
2 to administer the examination pursuant to section 1215.5 or 1216.

3 ~~(7)(6)~~ I will not review test questions, develop any scoring keys, or review or score
4 any pupil responses except as required by the test contractor's manuals.

5 By signing my name to this document, I am assuring that I will abide by the above
6 conditions.

7 Signed: _____

8 Print name: _____

9 Title: _____

10 School District/Affiliation: _____

11 Date: _____

12 (c) All persons having access to the California High School Exit Examination,
13 including but not limited to the ~~site principal~~, test site coordinator, test examiners, test
14 proctors, scribes, and persons assigned by a nonpublic school to implement students'
15 IEPs shall acknowledge the limited purpose of their access to the examination by
16 signing the California High School Exit Examination Test Security Affidavit set forth in
17 subdivision (d).

18 (d) The California High School Exit Examination Test Security Affidavit shall be as
19 follows:

20 CALIFORNIA HIGH SCHOOL EXIT EXAMINATION TEST
21 SECURITY AFFIDAVIT

22 I acknowledge that I will have access to the examination and test materials for the
23 purpose of administering the examination. I understand that these materials are highly
24 secure, and it is my professional responsibility to protect their security as follows:

- 25 (1) I will not divulge the contents of the examination to any other person through
- 26 verbal, written, or any other means of communication.
- 27 (2) I will not copy any part of the examination or test materials.
- 28 (3) I will keep the examination secure until the examination is actually distributed to
- 29 eligible pupils or eligible adult students
- 30 (4) I will limit access to the examination and test materials by test examinees to the
- 31 actual testing periods when they are taking the examination.

1 (5) I will collect and account for all materials following each examination and will not
2 permit eligible pupils or eligible adult students to remove examinations or test materials
3 from the room where testing takes place.

4 (6) I will not review any test questions, passages, or other test items with eligible
5 pupils or eligible adult students before, during, or after the examination.

6 (7) I will return all ~~examinations and~~ test materials to the designated test site
7 coordinator upon completion of the examination.

8 (8) I will not interfere with the independent work of any eligible pupil or eligible adult
9 student taking the examination and I will not compromise the security of the
10 examination by any means including, but not limited to:

11 (A) Providing eligible pupils or eligible adult students with access to examination
12 questions prior to testing.

13 (B) Copying, reproducing, transmitting, distributing or using in any manner
14 inconsistent with test security all or any section of any secure examinations or test
15 materials.

16 (C) Coaching eligible pupils or eligible adult students during testing or altering or
17 interfering with the eligible pupil's or eligible adult student's responses in any way.

18 (D) Making answer keys available to eligible pupils or eligible adult students.

19 (E) Failing to follow security rules for distribution and return of secure ~~examinations~~
20 ~~and~~ test materials as directed, or failing to account for all secure ~~examinations and~~ test
21 materials before, during, and after testing.

22 (F) Failing to follow test administration directions specified in test administration
23 manuals.

24 (G) Participating in, directing, aiding, counseling, assisting in, or encouraging any of
25 the acts prohibited in this section.

26 (9) I will administer the examination in accordance with the directions for
27 administration set forth in the test contractor's manuals for administration of the
28 examination.

29 (10) I have been trained to administer the examination.

30 Signed: _____

31 Print name: _____

1 Title: _____

2 School District/Affiliation: _____

3 Date: _____

4 NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 60850
5 and 60851, Education Code.

6

7 **Article 3. High School Exit Examination Testing**

8 **Variations/Accommodations/Modifications/Waivers**

9 **§ 1215. Testing Variations.**

10 (a) School districts may provide all eligible pupils and eligible adult students the
11 following testing variations:

12 (1) extra time within a testing day.

13 (2) test directions that are simplified or clarified.

14 (3) student marks in test booklets (other than responses), including highlighting.

15 (b) All eligible pupils and eligible adult students may have the following testing
16 variations if regularly used in the classroom:

17 (1) special or adaptive furniture.

18 (2) special lighting, special acoustics, or visual magnifying or audio amplification
19 equipment.

20 (3) an individual carrel or study enclosure.

21 (4) test individual student in a separate room provided that the eligible pupil or
22 eligible adult student is directly supervised by an employee of the school, school
23 district, or nonpublic school, who has signed the Test Security Affidavit.

24 (5) colored overlay, mask, or other means to maintain visual attention to the
25 examination or test items.

26 (6) Manually Coded English or American Sign Language to present directions for
27 test administration.

28 ~~(c) If a school district proposes the use of a variation on the examination that is not~~
29 ~~listed in this section, 1212.5, or 1216, the school district may submit a request for~~
30 ~~review of proposed variation in administering the examination pursuant to section 1218.~~

1 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60851,
2 Education Code.

3

4 **§ 1215.5. Accommodations for Pupils or Adult Students with Disabilities.**

5 (a) Eligible pupils or eligible adult students with disabilities shall be permitted to take
6 the examination with the following accommodations if specified in the eligible pupil's or
7 eligible adult student's IEP or Section 504 plan for use on the examination,
8 standardized testing, or for use during classroom instruction and assessments.

9 (b) Presentation accommodations include:

10 (1) large print versions in 20-point font.

11 (2) ~~test items~~ examination enlarged if larger than 20-point font is required.

12 (3) Braille transcriptions provided by the test contractor.

13 (4) audio or oral presentation of the mathematics section of the examination.

14 (5) Manually Coded English or American Sign Language to present test questions
15 on the mathematics section of the examination.

16 (c) Response accommodations include:

17 (1) responses marked in test booklet and transferred to the answer document by a
18 school, school district, or nonpublic school employee who has signed the Test Security
19 Affidavit.

20 (2) responses dictated orally, or in Manually Coded English or in American Sign
21 Language to a scribe for selected-response items (e.g., multiple-choice test questions).

22 (3) responses dictated orally or in Manually Coded English to a scribe, audio
23 recorder or speech-to-text converter on the writing portion of the examination, and the
24 eligible pupil or eligible adult student indicates all spelling and language conventions.

25 (4) word processing software with spell and grammar check tools turned off on the
26 writing portion of the examination.

27 (5) an assistive device that does not interfere with the independent work of the
28 eligible pupil or eligible adult student on the multiple choice or writing portion of the
29 examination.

30 (d) Scheduling/timing accommodations include:

31 (1) testing over more than one day after consultation with the test contractor.

1 (2) supervised breaks within a section of the examination.

2 (3) administration of the examination at the most beneficial time of day to the
3 eligible pupil or eligible adult student after consultation with the test contractor.

4 (e) Setting accommodations include tests administered by a test examiner to an
5 eligible pupil or eligible adult student at home or in the hospital.

6 (f) The use of accommodations on the examination will not invalidate an eligible
7 pupil's or eligible adult student's test score or scores.

8 ~~(g) If the eligible pupil's or eligible adult student's IEP team or Section 504 plan~~
9 ~~proposes a variation for use on the examination that has not been listed in this section,~~
10 ~~1215, or 1216, the school district may submit a request for review of the proposed~~
11 ~~variation in administering the examination pursuant to section 1218.~~

12 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60850,
13 Education Code.

14

15 **§ 1216. Modifications for Pupils or Adult Students with Disabilities.**

16 (a) Eligible pupils or eligible adult students with disabilities shall be permitted to take
17 the examination with the following modifications if specified in the eligible pupil's or
18 eligible adult student's IEP or Section 504 plan for use on the examination,
19 standardized testing, or for use during classroom instruction and assessments.

20 (b) The following are modifications as defined by Education Code section 60850
21 because they fundamentally alter what the examination measures or affect the
22 comparability of scores:

23 (1) arithmetic table, calculators, or math manipulatives on the mathematics section
24 of the examination.

25 (2) audio or oral presentation of the English/_language arts section of the
26 examination.

27 (3) Manually Coded English or American Sign Language to present test questions
28 on the English/_language arts section of the examination.

29 (4) spellcheckers, grammar checkers, or word processing software programs that
30 check or correct spelling and/or grammar on the writing portion of the examination.

1 (5) mechanical or electronic devices or other assistive devices that are not used
2 solely to record the eligible pupil's or eligible adult student's responses, including but
3 not limited to transcribers, scribes, voice recognition or voice-to-text software, and that
4 identify a potential error in the eligible pupil's or eligible adult student's response or that
5 correct spelling, grammar or conventions on the writing portion of the examination.

6 (6) responses dictated orally, in Manually Coded English, or in American Sign
7 Language to provide an essay response to a scribe and the scribe provides spelling,
8 grammar, and language conventions.

9 (7) dictionary on any section of the examination.

10 (c) For the purposes of receiving a high school diploma, aAn eligible pupil or eligible
11 adult student who takes the examination with one or more modifications shall receive a
12 score ~~marked~~ that is not valid for the sections of the examination on which the
13 modifications were used. If the score is equivalent to a passing score, the eligible pupil
14 or eligible adult student may be eligible for a waiver pursuant to Education Code
15 section 60851.

16 ~~(d) If the eligible pupil's or eligible adult student's IEP or Section 504 plan proposes~~
17 ~~a variation for use on the examination that has not been listed in this section, 1215, or~~
18 ~~1215.5, the school district may submit a request for review of proposed variations in~~
19 ~~administering the examination pursuant to section 1218.~~

20 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60850,
21 Education Code; and 20 USC Section 6311.

22
23
24
25 **§ 1217. English Learners.**

26 School districts shall provide identified English learner pupils or adult English
27 learner students the following additional testing variations if regularly used in the
28 classroom or for assessment:

29 (a)~~(4)~~ Flexible setting. English learners may have the opportunity to be tested in a
30 separate room with other English learners provided that the eligible pupil or eligible

1 adult student is directly supervised by an employee of the school, district, or nonpublic
2 school, who has signed the Test Security Affidavit.

3 ~~(b)(2)~~ Flexible schedule. English learners may have additional supervised breaks
4 within a testing day.

5 ~~(c)(3)~~ Flexible time. English learners may have extra time on the examination within
6 a testing day.

7 ~~(d)(4)~~ Translated directions. English learners may have the opportunity to hear the
8 test directions printed in the test contractor's manual translated into their primary
9 language. English learners may have the opportunity to ask clarifying questions about
10 the test directions in their primary language.

11 ~~(e)(5)~~ Glossaries. English learners may have access to translation glossaries
12 (English to primary language and/or primary language to English). The glossaries are
13 to include only the English word or phrase with the corresponding primary language
14 word or phrase. The glossaries shall include no definitions, ~~or~~ formulas, or parts of
15 speech.

16 NOTE: Authority cited: Sections 12001 and 33031, Education Code. Reference:
17 Sections 60810(7)(d)(1), 60850 and 60852, Education Code; ~~and~~ 20 USC Section
18 6311.

19

20 **§ 1218. Review Process for Proposed Variations Not Specified in Sections 1215,**
21 **1215.5, or 1216 in Administering the Examination.**

22 (a) The school district ~~may~~ must file a request with the CDE for review and approval
23 of proposed examination variations ~~with the Department for a case-by-case~~
24 ~~determination of variations~~ that are not specified in ~~§~~sections 1215, 1215.5, or 1216.
25 Requests must be received by the ~~Department~~ CDE at least 30 working days in
26 advance of the proposed administration of the examination.

27 (b) The request for review of proposed variations in administering the examination
28 must include:

29 (1) A description of the requested variation(s).

30 (2) If applicable, a certification that the pupil's or adult student's IEP or Section 504
31 plan specifies that the requested variation is appropriate and necessary to access the

1 examination due to the pupil's or adult student's identified disability(ies) and that such
2 variation is currently listed in the pupil's or adult student's IEP or Section 504 plan.

3 (c) The CDE's Department's determination shall be a final administrative decision
4 for purposes of review under the Administrative Procedure Act.

5 (d) The CDE Department shall issue its decision within 15 working days of receipt of
6 the request for review of proposed variation.

7 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60850,
8 Education Code.

9

10 **§ 1219. Independent Work of the Pupil or Adult Student.**

11 In administering the examination, with accommodations or modifications pursuant to
12 Section 1215.5 or 1216, school districts shall ensure that all examination responses are
13 the independent work of the pupil or adult student. School districts, school district
14 personnel, including scribes, and nonpublic school personnel are prohibited from
15 assisting any pupil or adult student in determining how the pupil or adult student will
16 respond to each question, and are prohibited from leading or directing the pupil or adult
17 student to a particular response, and from correcting, prompting, or otherwise
18 influencing a response.

19 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60850,
20 Education Code.

21

22

Article 5. Apportionment

23 **§ 1225. Apportionment.**

24 (a) Annually, each school district shall receive an apportionment information report
25 with the following information for those examinations administered during the previous
26 fiscal year (July 1 through June 30).

27 (1) The number of eligible pupils by grade level and eligible adult students enrolled
28 in each school and in the school district on the day of testing as indicated by the
29 number of answer documents submitted to the test contractor for scoring for each
30 administration.

1 (2) The number of eligible pupils by grade level and eligible adult students who were
2 administered any portion of the examination.

3 (3) The number of eligible pupils by grade level with demographic information only
4 who were not tested for any reason other than because they were taking the CAPA.

5 (b) To be eligible for apportionment payment, school districts must meet the
6 following conditions:

7 (1) The school district has returned all secure test materials, and

8 (2) The superintendent of the school district has certified that all examinations
9 during the prior fiscal year were administered in compliance with California Code of
10 Regulations, title 5, division 1, chapter 2, subchapter 6.

11 (3)(2) The superintendent of ~~each~~ the school district has certified the accuracy of
12 the apportionment information report for examinations administered during the prior
13 fiscal year (July 1 through June 30), which certification is either;

14 (A) postmarked by December 31, or

15 (B) if postmarked after December 31, the apportionment information report must be
16 accompanied by a waiver request as provided by Education Code section 33050. For
17 those apportionment information reports postmarked after December 31,
18 apportionment payment is contingent upon the availability of an appropriation for this
19 purpose in the fiscal year in which the tests were administered.

20 (c) The amount of funding to be apportioned to the school district for the
21 examination shall be calculated by multiplying the amount per administration
22 established by the ~~State Board of Education~~ SBE to enable school districts to meet the
23 requirements of Education Code section 60851 by the number of eligible pupils and
24 eligible adult students in the school district tested for one or both portions of the
25 examination during the previous fiscal year as determined by the apportionment
26 information report certified by the school district superintendent pursuant to subdivision
27 (b).

28 NOTE: Authority cited: Section 33031, Education Code. Reference: Section 60851,
29 Education Code.

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Frequent Questions -- Supplemental Instruction

Note: Please refer to the [Fiscal Issues Relating to Budget Reductions and Flexibility Provisions](#) guidance letter for information on provisions that apply to all programs. The letter covers such matters as the public hearing requirement, base year funding provisions, and how funding reductions will be calculated.

For specific questions related to funding, please contact Judy Gonzalez at jgonzalez@cde.ca.gov.

Program Characteristics Prior to SBX3 4:

- All supplemental instruction (SI) programs may be offered before or after the regular school day, on Saturdays, during intersession, or during summer sessions.
- SI may be offered during the school day only to students who have failed one or both parts of the California High School Exit Exam (CAHSEE), provided that the SI does not supplant core curriculum classes (reading, writing, mathematics, history-social science, science or physical education (EC 37254).
- There is no specified minimum or maximum student/teacher ratio for any SI program.
- No teacher credential requirements are specified for any of the SI programs, although districts should take reasonable steps to hire qualified instructors to provide the SI specified in the pertinent California *Education Code* sections.
- No specific curriculum materials or resources are specified for any of the SI programs, although the curricula of SI programs should support the program's instructional objectives.
- There is no specified minimum number of hours or days per pupil for any SI program.
- With the exception of direct-funded charter schools, the requirements and reimbursements pertaining to all SI programs apply to school districts and not to individual schools or classrooms.

Unique Characteristics of Pupil Promotion and Retention (PPR)-Related and Other Supplemental Instruction Programs

(Not applicable while SBX3 4 is in effect.)

Program Description and Targeted Students	Education Code Section	Mandatory or Voluntary	Grade Span Served	Enrollment and Reimbursement Caps
SI for pupils <i>recommended for retention or retained</i>	37252.2	Mandatory	Grades 2-9	Uncapped re: Number of students served and number of hours per student
SI for pupils identified as <i>at risk of retention</i> or deficient in math, reading, or written expression based on STAR scores	37252.8	Voluntary	Grades 2-6	5% of grade span (7% if funds allow), 120 hours per student max.
SI for pupils <i>not demonstrating sufficient progress toward passing the CAHSEE</i>	37252	Mandatory	Grades 7-12	Uncapped re: Number of students served and number of hours per student
SI in <i>core academic subjects</i> (for all students), (commonly referred to as "summer school")	37253	Voluntary	All grades offered (K-12)	5% of grade span (10% if funds allow), 120 hours per student max.
SI for pupils who failed one or both parts of CAHSEE	37254	Voluntary	Grades 10-12	Uncapped re: Number of students served and number of hours per

Frequently Asked Questions and Responses

- 1. My child was retained, but the school is not providing adequate intervention. What can I do so that my child receives adequate supplemental instruction?**

The California *Education Code (EC)* Section 48070.5 requires that a school district's PPR policy must provide opportunities for remedial instruction for pupils at risk of or recommended for retention. Furthermore, it also requires school districts to provide "programs of direct, systematic, and intensive supplemental instruction to pupils enrolled in grades two through nine who have been recommended for retention or who have been retained" (*EC* sections 37252.2 and 37252.5). Inquire at the school site or at the district level, if necessary, to obtain access to the supplemental instruction that should be available to pupils under these statutes. Inform the district staff person in charge of PPR-related SI that you were not informed of, and/or your child was not provided with, this service in a timely manner.

- 2. When are school districts required to provide supplemental instruction (SI) to a student?**

School districts are *required* to provide SI to students a) when they are in grades two through nine and are recommended for retention or retained in grade, and b) when they are in grades seven through twelve and do not demonstrate sufficient progress toward passing the California High School Exit Exam.

- 3. How long does the obligation to provide supplemental instruction to retained students last?**

The obligation pertains to the school year in which a student is actually retained (i.e., the school year in which the student is repeating the same grade).

- 4. What kinds of classes may be offered for the core academic "summer school" program (pursuant to Education Code Section 37253)?**

"Core academic" refers to classes in the "adopted course of study" for grades one through six and for grades seven through twelve, pursuant to *EC* sections 51210 and 51220, respectively. These include the following areas of study

Grades 1-6	Grades 7-12
English	English
Mathematics	Mathematics
Social Studies	Social Studies
Science	Science
Visual & performing arts	Visual & performing arts
Health	Foreign languages
Physical education	Visual & performing arts
N/A	Career technical education
N/A	Applied arts
N/A	Physical education
N/A	Automobile driver education

Other areas of study, prescribed by the governing board, may be included in the "adopted course of study."

- 5. How does Independent Study relate to the supplemental instruction programs?**

Because students in Independent Study programs may have an instructional day that does not conform to the regular instructional day of the school district of attendance, the emphasis should be on providing *supplemental* instruction to qualifying students. That is, the SI program should supplement and not supplant, replace, or be included as part of the student's academic work under Independent Study. All other SI program requirements pertain to students in Independent Study as they do to all other students.

6. **May charter schools offer supplemental instruction programs and receive reimbursement from the state?**

Yes, charter schools *may* offer, but are not required to offer, SI programs to qualifying students. Direct-funded charter schools are reimbursed for SI services on the same basis as school districts (i.e., as local educational agencies).

Questions: Kathleen Halvorson | KHalvorson@cde.ca.gov | 916-323-4629

California Department of Education
1430 N Street
Sacramento, CA 95814

Last Reviewed: Thursday, April 18, 2013

Guidance: Application for Categorical Funding

2012-13 Consolidated Application guidance for the Application for Categorical Funding.

Categorical Program Provisions in SBx3 4 2008 Budget Act Changes (Flexibility)

Section 15 of SBX3 4 (California *Education Code* [EC] Section 42605) authorizes complete flexibility in the use of funds appropriated in 39 budget act items. For 2008–09 through 2012–13, school districts, county offices of education, and charter schools may use funds from these 39 items for any educational purpose. The funds are therefore unrestricted; program or funding requirements, as otherwise provided in statute, regulation, and budget act provisional language associated with the funding, are not in effect. The following five programs from the ConApp are specifically listed in the flexibility provision:

- School Safety and Violence Prevention;
- California School Age Families Education (Cal-SAFE);
- Peer Assistance and Review (PAR);
- Middle and High School Supplemental Counseling Program;
- California High School Exit Exam (CAHSEE) Intensive Instruction.

Since these programs are specifically listed in the flexibility provision, there is no need for LEAs to apply for funding or report the results of these programs. The legal assurances for these programs have been removed from the ConApp since the LEA may use these funds for any educational purpose. The LEAs will automatically receive funding if they participated previously in these programs. More information on the flexibility provisions can be found on the [Correspondence Web page](#).

Title III, Part A Limited English Proficient Student Subgrant Program

All local educational agencies (LEAs) that qualify for a direct-funded Limited English Proficient (LEP) Student Program Subgrant under the Elementary and Secondary Act, (ESEA) Title III, Part A are asked to accept or decline their funding for the 2012–13 school year. A direct-funded subgrant is defined as a subgrant of \$10,000 or more.

To determine the estimated amount of your LEA's subgrant for English Learner (EL) students, go to the CDE Request for Applications Title III LEP [Student Subgrant Program Web page](#).

The "Not Eligible" box is checked in cases where:

- the LEA did not report the enrollment of one or more EL students on the on the Spring 2011 California Longitudinal Achievement Data System (CALPADS);
- the LEA reported the enrollment of one or more EL students but the resulting Title III, Part A formula subgrant is calculated to be an amount less than \$10,000.

Pursuant to the ESEA, Section 3114(b), LEAs whose subgrant is less than \$10,000 must apply for Title III funds as a part of a consortium. Consortia applications are not transacted through the Consolidated Application and Reporting System (CARS). For more information on consortia applications, please go to the CDE Request for Applications Title III LEP [Student Subgrant Program Web page](#).

Title III, Part A, Immigrant Student Subgrant Program

All LEAs that qualify for a direct-funded Immigrant [Student Subgrant Program](#) Subgrant under the ESEA, Title III, Part A are asked to accept or decline their funding for the 2012–13 fiscal year (FY) A direct-funded subgrant for the Immigrant Student Subgrant Program is defined as a subgrant of \$5,000 or more.

To determine eligibility and the estimated amount of your LEA's Title III, Part A subgrant for Immigrant students, please visit the CDE Request for Applications Title III Immigrant Student Subgrant Program Web page.

An LEA must meet two eligibility criteria in order to apply on the ConApp. The first criterion is whether there has been a 2 percent growth in the immigrant student population. Eligibility is not based on total number of immigrant students. For FY 2012–13, eligibility is calculated by averaging two years of immigrant student numbers (FY 2008–09 and 2009–10), and comparing this average to the third year (FY 2010–11). These numbers are extracted from the California Longitudinal Achievement Data System (CALPADS) as of FY 2010–11 and the Student National Origin Report (SNOR) prior to FY 2010–11. If there has been two percent growth, the LEA is considered newly "eligible", beginning with FY 2012–13.

Note that once an LEA establishes eligibility, the LEA will receive funding for three consecutive years, provided the LEA applies for funding and has one or more immigrant students, even if it does not reestablish its eligibility within those three years. Therefore, LEAs who were newly eligible in FY 2010–11 or 2011–12, and who reported one or more immigrant students on the Spring 2011 CALPADS are also automatically considered eligible.

The second criterion which an LEA must meet in order to apply on the ConApp has to do with the amount generated by the students in the LEA. If the LEA is eligible based on the first criterion but does not generate \$5,000 or more, the LEA must apply via a consortium. Consortia applications are not transacted through the ConApp. For more information on consortia applications, please visit the CDE Request for Applications Title III Immigrant [Student Subgrant Program](#) Web page.

The LEA is considered “Not Eligible” in cases where:

- the LEA did not report the enrollment of one or more immigrant students on the Spring 2011 CALPADS;
- the submitted data did not reflect two percent growth based on averaging two years (2008–09 and 2009–10) and comparing it to the third year (2010–11);
- the LEA reported the enrollment of one or more immigrant students but the resulting Title III, Part A formula subgrant is calculated to be an amount less than \$5,000.

Title VI, Subpart 1, Rural Education Achievement Program Flexibility

All LEAs that are eligible for Rural Education Achievement Program (REAP) Flexibility are asked to indicate whether or not they intend to use their REAP Flexibility in the 2012–13 school year.

The LEAs that are eligible may use any or all of their funds received under Title II, Parts A or D; or Title IV, Part A to carry out any of the activities authorized under the following programs:

- Title I, Part A
- Title II, Part A or D
- Title III
- Title IV, Part A or B

Funds do not need to be transferred to different account codes. Funds will still be accounted for in the ConApp Part II under the programs from which they were allocated. You simply need to indicate your intent to use the funds in this flexible manner. For information regarding eligibility for this program, go to the [REAP](#) Web page.

Title VI, Subpart 1, Small Rural Schools Achievement Grant

Funds for the Small Rural Schools Achievement (SRSA) Grant are awarded to LEAs directly from the United States Department of Education (ED). If eligible, application must be made to participate in the Grants and Awards Payment System (GAPS). Questions concerning GAPS should be directed to Robert Hitchcock, ED, at robert.hitchcock@ed.gov.

The LEA must indicate its intent to apply to ED for these funds is indicated by checking the “Yes” box.

Title VI, Subpart 2, Rural Low Income Schools Grant

All LEAs that are eligible for the Rural Low Income Schools (RLIS) Grant program for 2011–12 should indicate their intent to apply for these funds. For information regarding eligibility for this program, go to the [REAP](#) Web page.

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[Previous](#) | [Next](#)

Questions: ConApp Support Desk | conappsupport@cde.ca.gov | 916-319-0297

Frequently Asked Questions

Frequently asked questions and answers about the Middle and High School Supplemental School Counseling Program.

Program

If a school district receives funding for the Middle and High School Supplemental School Counseling Program, must it continue to satisfy the requirements set forth in California *Education Code (EC)* Sections 52378 to 52380?

No, for the 2008-09 fiscal year to the 2012-13 fiscal year, districts that receive funding for the Middle and High School Supplemental School Counseling Program (Item 6110-108-0001) use that funding according to the decision made by the local governing board at a public meeting. The funding may be used for any educational purpose as decided by the local governing board pursuant to *EC* Section 42605(a):

42605. (a) (1) Unless otherwise prohibited under federal law or otherwise specified in subdivision (e), for the 2008-09 fiscal year to the 2012-13 fiscal year, inclusive, recipients of funds from the items listed in paragraph (2) may use funding received, pursuant to subdivision (b), from any of these items listed in paragraph (2) that are contained in an annual Budget Act, for any educational purpose:

(2) 6110-104-0001, 6110-105-0001, 6110-108-0001, 6110-122-0001, 6110-123-0001, 6110-124-0001, 6110-137-0001, 6110-144-0001, 6110-150-0001, 6110-151-0001, 6110-156-0001, 6110-181-0001, 6110-188-0001, 6110-189-0001, 6110-190-0001, 6110-193-0001, 6110-195-0001, 6110-198-0001, 6110-204-0001, 6110-208-0001, 6110-209-0001, 6110-211-0001, 6110-227-0001, 6110-228-0001, 6110-232-0001, 6110-240-0001, 6110-242-0001, 6110-243-0001, 6110-244-0001, 6110-245-0001, 6110-246-0001, 6110-247-0001, 6110-248-0001, 6110-260-0001, 6110-265-0001, 6110-266-0001, 6110-267-0001, 6110-268-0001, and 6360-101-0001.

What is the purpose of the Middle and High School Supplemental School Counseling Program?

The 2006-07 California Budget established the Middle and High School Supplemental School Counseling Program. That Budget included \$200 million ongoing Proposition 98 General Fund to increase the number of school counselors that serve seventh- through twelfth-grade students. These new counselors would help to provide students with information on all educational and vocational options available to them and serve students who have failed or are at risk of failing the California High School Exit Exam (CAHSEE), as well as students who are at risk of not graduating due to insufficient credits. The authorizing statute, *EC* Section 52378, et seq., further specifies that the funding will be available to school districts for these purposes. It is important to note that the statute is intended first to serve all students in seventh through twelfth grades, with additional attention to those who have failed or are at risk of failing the CAHSEE, as well as students who are at risk of not graduating due to insufficient credits. The CDE has determined that professional development support for Pupil Personnel Services credentialed staff working in the district or school's comprehensive, results-based student guidance and counseling program would be an allowable expenditure of these funds.

What are the specific implementation requirements of the Middle and High School Supplemental School Counseling Program? Assembly Bill 1802, Subdivision A, outlines two provisions for the program:

(1) A provision for individualized review of the pupil's academic and department records.

(2) A provision for a counselor to meet with each pupil and, if practicable, the parent(s) or guardian(s) of the pupil, to discuss:

- the academic and department records of the pupil
- the pupil's educational options
- the coursework and academic progress necessary for the pupil's satisfactory completion of high school
- the pupil's passage of the CAHSEE
- the pupil's options in career technical education and postsecondary plans, to include Regional Occupation Programs and other alternatives within the district

Who may apply to participate in the Middle and High School Supplemental School Counseling Program?

Applications have been suspended from the 2008-09 fiscal year to the 2012-13 fiscal year. If applications to participate are resumed, any public school district in the state of California that serves pupils in grades seven through twelve and, to a limited extent, charter schools may apply. County offices of education, charter schools not affiliated with a school district, and other private schools are **not** eligible for this funding.

What are the timelines for program implementation?

The statute previously required that "For a pupil enrolled in grade ten, the conference shall occur between the spring of that school year in which the pupil is enrolled in grade ten and the fall of the following school year in which the pupil would be enrolled in grade eleven. For the 2006-07 school year, the conference shall occur on or before December 31, 2006. These would be the eleventh-grade students this year as they were in the tenth grade in the spring of 2006." The CDE has agreed that these timelines will apply to each year of the funding.

If the Middle and High School Supplemental School Counseling Program is still implemented to EC requirements, does a counselor need to have an individual conference with each student in grades seven through twelve every year?

California EC Section 52378(a) requires that a program to implement the provisions of law be adopted by each local governing board. That program must include a provision to meet with each pupil. The method to accomplish this goal, the purview of the local governing board, is to be reflected in the adopted plan.

Please note that EC Section 52378(d) does require that an individual conference take place each year for those "at risk" students who are identified pursuant to EC Section 52378(b)(1) and EC Section 52378(b)(2). This individual conference must include the student, his or her parent or legal guardian, and a school counselor.

Whom may I contact regarding program questions?

For additional program implementation information regarding the Middle and High School Supplemental School Counseling Program, please contact David Kopperud, Education Programs Consultant, Educational Options, Student Support, and American Indian Education Office, at 916-323-1028 or by e-mail at dkopperud@cde.ca.gov.

Fiscal

How much funding is available for the Middle and High School Supplemental School Counseling Program?

For fiscal year 2008-09, the funds appropriated were \$176,908,000 and for 2009-10 the amount appropriated is \$167,043,000.

Does my local board need to take action prior to applying for these funds?

No. However, prior to the receipt of Middle and High School Supplemental School Counseling Program funding, each local governing board must adopt a counseling program at a public meeting that includes the following:

- A provision for individualized review of a pupil's academic and department records.
- A provision for counselors to meet with each pupil and, where practicable, each pupil's parent(s) or guardian(s) to explain the pupil's records, educational options, coursework, and academic progress needed for satisfactory completion of middle or high school, passage of the CAHSEE, and the availability of career technical education. The educational options explained at the meeting shall, if services are available, include college preparatory programs and vocational programs, including Regional Occupational Centers and Programs and any other alternatives available to pupils within the district.

Are there other conditions of receiving program funds?

Yes. As a condition of receiving Middle and High School Supplemental School Counseling Program funding, each school district and direct-funded charter school must:

- Include, for pupils in grade twelve, options for continuing his or her education if he or she fails to meet graduation requirements in the above list of coursework and experience.
- Require each school within the district's jurisdiction that enrolls pupils in grade seven to develop a list of coursework and experience necessary to assist each pupil who is deemed to be at or far below basic level in English language arts or mathematics to successfully transition to high school and meet all graduation requirements, including passing the CAHSEE.
- Provide a copy of the applicable list of coursework and experience to each pupil and his or her parent(s) or guardian(s), and include the list of coursework and experience in the pupil's cumulative records.
- Require each school within its jurisdiction to offer and schedule an individual conference with each pupil in grade seven who is deemed to be at far below the basic level in English language arts or mathematics, the pupil's parent(s) or guardian(s), and a counselor. This conference must occur before January of the school year in which the pupil is in grade seven.
- Require each school within its jurisdiction to offer and schedule an individual conference with each pupil in grades ten and twelve who has not passed one or both sections of the CAHSEE, the pupil's parent(s) or guardian(s), and a counselor.
 - For pupils in grade ten, the conference must occur between the spring of the school year in which the pupil is enrolled in grade ten and the fall of the following school year. For the 2006-07 school year, the conference shall occur on or before December 31, 2006.
 - For pupils in grade twelve, the conference must occur after November, but before March of the school year in which the pupil is enrolled in grade twelve.
- During these individual conferences, the school counselor must apprise the pupil and the pupil's parent(s) or guardian(s) of the following:
 - The consequences of not passing the CAHSEE
 - The available programs, courses, and career technical education options needed by the pupil for satisfactory completion of middle or high school
 - The cumulative records and transcripts of the pupil
 - The pupil's performance on standardized and diagnostic assessments
 - The remediation strategies, high school courses, and alternative education options available to the pupil
 - Information on postsecondary education and training
 - The pupil's score on the English language arts or mathematics portion of the California Standards Test administered in grade six, as applicable
- Submit an annual report, including the number of school counselors involved in conferences, the number and percentage of pupils who participated in conferences and who fail to pass one or both sections of the CAHSEE, and a summary of the most prevalent results for pupils based on graduation plans

How do I apply for funding?

In order to receive Middle and High School Supplemental School Counseling Program funding, school districts and direct-funded charter schools serving any of grades seven through twelve must apply through the Consolidated Application, Part 1.

May I choose to apply next year if I don't apply this year?

Yes. Application for these funds must be made annually through the Consolidated Application, Part I.

How much money will I receive?

Each participating school district's annual allocation will be based on a per-pupil amount, with minimum awards of \$5,000 per school site with 100 or fewer pupils in grades seven through twelve, \$10,000 per school site with between 101 and 200 pupils in grades seven through twelve, and \$30,000 per school site with more than 200 pupils in grades seven through twelve. Each participating charter school's annual allocation will be based on a per-pupil amount, with no minimum grant award. Pupil counts used for the allocations will be based on prior year California Basic Educational Data System (CBEDS) enrollment in grades seven through twelve. The specific per-pupil rate will depend upon the number of applicant school districts and charter schools and their enrollment in grades seven through twelve.

Will that amount change each year?

Possibly. Each year the district's entitlement will be based on the number of districts choosing to participate in the program and the number of pupils reported in grades seven through twelve on the prior year's CBEDS collection. The total program funding will not change unless done so through the legislative budgeting process.

When will I receive funding, and how will the money be allocated—as a lump sum or in partial payments?

Funding will be allocated in two apportionments. The first 75 percent of Middle and High School Supplemental School Counseling Program funding will be allocated in December. The remaining 25 percent will be allocated in the following spring.

Are the funds for a specific school site or for the district?

Middle and High School Supplemental School Counseling funding will be apportioned to applicant school districts and direct-funded charter schools for the purpose of supplementing existing counseling services to students. As a condition of receiving these funds, local governing boards must adopt a counseling program that meets specified criteria, and school districts and direct-funded charter schools must meet specific criteria regarding services provided to pupils and annual reporting to the CDE. In implementing the Middle and High School Supplemental School Counseling Program, school districts and direct-funded charter schools should allocate funds to school sites to meet the requirements in state law and their adopted program.

What may be purchased with these funds?

Middle and High School Supplemental School Counseling Program funding must be used to provide counseling services to students by individuals with a valid Pupil Personnel Services (PPS) Credential. Priority for services must go to serving pupils in seventh grade who tested far below basic in English language arts and/or mathematics on the previous CST, pupils who have failed one of both parts of the CAHSEE in the Spring of their tenth grade year, and pupils in the twelfth grade who have not passed the CAHSEE or are at risk or not graduating due to insufficient credits. These funds must be used to supplement the existing number of PPS credentialed staff who serve students in grades seven through twelve.

May I charge indirect costs to the program?

Yes, consistent with the CDE's existing indirect cost rate guidance, the Middle and High School Supplemental School Counseling Program may be charged for indirect costs, provided the amount charged does not exceed the local educational agency's approved indirect cost rate. Further information can be found at [Indirect Cost Rates](#).

May I carry over funds from this program?

There are no restrictions on carry over of these funds in law, however, please be cautioned that the district or charter school is responsible for fulfilling all of the requirements of law for the year in which they receive funding. A district or charter school should also be cautioned that combining carry over funding with current year funding to fund employee salaries could result in shortfalls in years where they do not have carry over funds.

What is the Resource Code for the Middle and High School Supplemental School Counseling Program?

The Middle and High School Supplemental School Counseling Program Resource Code is 7080.

What is the Revenue Object Code for the Middle and High School Supplemental School Counseling Program?

The Middle and High School Supplemental School Counseling Program Revenue Object Code is 8590.

Who do I contact regarding fiscal questions if they are not answered here?

For additional fiscal information regarding the Middle and High School Supplemental School Counseling Program, please contact Nancy Cook, Associate Governmental Programs Analyst, Categorical Allocations and Audit Resolutions Unit, at 916-324-4549 or by e-mail at ncook@cde.ca.gov.

Reporting

Are there any reporting requirements as a condition of receiving these funds?

EC Section 52380 states, "As a condition of receipt of funds pursuant to this chapter, a school district shall submit an annual report in a manner determined by the Superintendent that describes the number of pupils served, the number of school counselors involved in conferences, the number and percentage of pupils who participated in conferences and who successfully pass the high school exit examination, and the number and percentage of pupils who participated in conferences and who fail to pass one or both sections of the high school exit examination, and a summary of the most prevalent results for pupils based on the graduation plans developed pursuant to this chapter."

What specific information is required in the report?

Applicants are instructed to be prepared to submit data relevant to all Program Specific Assurances. The minimum information required is noted above in question 1. Reporting of the 2006-07 Middle and High School Supplemental School Counseling Program will be processed through the CDE Consolidated Application (ConAPP), Part II. The ConApp, Part II will be available on the internet in mid-December each year and is required to be completed and filed with the CDE by the end of January of the following year. The report should include only prior school year data. For example, districts and charter schools should report data from the 2006-07 school year, through summer of 2007, on the ConApp, Part II in January of 2008.

Whom do I contact regarding reporting questions if they are not answered here?

For additional reporting information regarding the Middle and High School Supplemental School Counseling Program, please contact the Educational Options, Student Support, and American Indian Education Office, at 916-323-2183.

Questions: Educational Options, Student Support, and American Indian Education Office | 916-323-2183

California Department of Education
1430 N Street
Sacramento, CA 95814

Last Reviewed: Thursday, February 07, 2013

(Without Reference to File)

SENATE THIRD READING
SB 4 X3 (Ducheny)
As Amended February 14, 2009
2/3 vote. Urgency

SENATE VOTE :Vote not relevant _

SUMMARY : Reduces the Proposition 98 guarantee in the current year by \$7.3 billion through a mix of program reductions, deferrals and redesignation of funds and makes various statutory changes to implement these reductions for the Budget Act of 2008 and the Budget Act of 2009.

- 1) Implements the administration's categorical flexibility proposal which allows school districts to use funding from 43 categorical programs, totaling \$5.9 billion, for any educational purpose. Programs exempted from this flexibility include: Economic Impact Aid (EIA), special education, K-3 Class Size Reduction, child nutrition, Adults in Correctional Facilities, Apprenticeship programs, English Learner Student Assistance, Foster Youth Services, K-12 High Speed Network, Partnership Academies, Student Assessments, Agricultural Vocational Education, Charter Schools Facility Grants and Year Round Schools.
- 2) Makes across the board reductions totaling \$944 million to 53 categorical programs. This results in approximately a 15% reduction to each program.
- 3) Defers a total of \$3.24 billion in K-14 funds from FY 2008-09 to 2009-10 as follows:
 - a) Defers \$2 billion of school district apportionment payments and \$570 million in K-3 Class Size Reduction funding from February (FY 2008-09) to July (FY 2009-10);
 - b) Increases the existing June-to-July deferral of school district principal apportionments by \$340 million;
 - c) Defers an additional \$340 million of community college apportionment payments from January through April to July for FY 2009-10; and,
- d) Defers \$2.7 billion in K-14 funds within the 2009-10 fiscal year as follows:
 - i) \$1.2 billion of K-14 apportionment payments from July 2009 to October 2009; and,
 - ii) \$1.5 billion of school district apportionment payments from August 2009 to October 2009.
- 4) Reappropriates unspent prior year one-time K-14 Proposition 98 funds totaling approximately \$46 million to the K-3 Class Size Reduction Program (K-3 CSR) and reduces ongoing funds for that program by the same amount. This is a technical change; K-3 CSR is simply the vehicle through which past-year unspent funds would be used to achieve current-year savings.
- 5) Reduces 2008-09 Proposition 98 appropriations for a variety of categorical programs by \$59.8 million to capture natural savings.
- 6) Specifies that \$1.1 billion of the over appropriation of the Proposition 98 guarantee in FY 2008-09 shall be scored in satisfaction of "settle-up", displacing the \$150 million annual payments that would otherwise be made in FY 2008-09 and future years.

- 7) Repeals, for FY 2008-09, the General Fund appropriation for home-to-school transportation and funds it instead with Public Transportation Account and Mass Transportation Fund monies, which results in General Fund savings of about \$619 million.
- 8) Increases the 2008-09 county office of education (COE) revenue limit deficit factor from 4.396% to 7.839% and the school district deficit factor from 4.713% to 7.844% to reflect withdrawal of the K-12 COLA (\$244 million) and a \$945 million reduction to the COE and school district revenue limit.
- 9) Creates, for FY 2009-10, a COE deficit factor of 13.360% and a school district deficit factor of 13.094%, which represents foregone estimated COLA in those years and an additional \$268 million reduction to the revenue limits in FY 2009-10.
- 10) Declares that the budgeted COLA rate of zero percent for

SB 4 X3

Page 3

various K-12 categorical programs in 2009-10 is in-lieu of the COLA that would be applied pursuant to any other law.

- 11) Suspends statutory requirements that local educational agencies (LEAs) buy newly-adopted instructional materials in FY 2008-09 and 2009-10, and relieves county offices of education of the responsibility to confirm the purchase of such materials during site visits. Additionally, this bill ensures that if school districts do purchase instructional materials with any state funds, they are subject to the specified state law surrounding the purchase of such materials.

- 12) Reduces, for FY 2008-09 through 2012-13, the amount that school districts are required to set aside in "routine restricted maintenance accounts" from 3% to 1% of their General Fund budgets.

- 13) Suspends, for FY 2008-09 through 2012-13, reporting requirements for school districts which fail to set at least a half percent of their "current-year revenue limit average daily attendance" funding for maintenance of facilities.

- 14) Suspends, for FY 2009-10, the requirement that funds be transferred from the Proposition 98 Reversion Account to the School Facilities Emergency Repair Account (created by the Williams lawsuit). Additionally, prohibits school districts from using School Facilities Emergency Repair Account funds to supplant state funds provided for deferred maintenance, and from depositing those funds into district deferred maintenance funds. Emergency repair funds can be used only for emergency repairs.

- 15) Authorizes, for FY 2008-09 and 2009-10, LEAs to use restricted ending fund balances (as of June 30, 2008) for any purpose. All ending balances can be accessed except balances from the following programs: Economic Impact Aid, Targeted Instructional Improvement Grants, Instructional Materials, Special Education, Quality Education Investment Act, CAHSEE Supplemental Instruction, and Home-to-School Transportation. Requires LEAs who elect to use this authority to submit a related report to the Superintendent of Public Instruction (SPI), and requires the SPI to compile those reports and submit the information to the Legislature by October 31, 2009.

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- 16) Changes the penalty structure for the K-3 CSR program for FY 2008-09 through FY 2011-12 for schools exceeding the maximum class sizes under the class size reduction incentive program as follows: 20.5-21.5 students: 5% penalty; 21.5-22.5: 10% penalty; 22.5-23: 15% penalty; 23-25: 20% penalty; over 25

students: 30% penalty. Specifies that districts are only eligible to receive funding under the relaxed requirements if they were participating in the K-3 Class Size Reduction program as of December 10, 2008.

17) Establishes for FY 2011-12, a "post-SB 727" equalization formula. This formula is meant to ensure that at least 90 percent of average daily attendance (according to size and type of district) would receive the same level of base revenue limit funding.

18) Clarifies that the charter school categorical block grant, teacher dismissal apportionment, and the Year Round Schools program will not receive a cost-of-living increase in 2008-09, which is consistent with the treatment of other K-12 categorical programs.

19) R epeals Control Section 12.40 of the 2008 Budget Act (Mega-item), which allows LEAs to move funds between certain categorical programs. That limited flexibility will be replaced by the broader flexibility provided in the bill.

20) Authorizes the Department of Education to reduce principal apportionment payments to LEAs to the extent necessary to recapture payments made before mid-year cuts were implemented.

21) Allows an additional month for the encumbrance of various categorical funds that are being deferred from 2009-10 to 2010-11.

22) ^^^ Suspends existing statute that specifies the division of Proposition 98 funding among K-12 Local Educational Agencies (LEAs), community colleges, and other state agencies, and reflects a division of funding that conforms to that of the 2008-09 Budget.

Higher Education:

SB 4 X3

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23) Declares legislative intent that no new General Fund augmentation be used for contributions to the UC Retirement Plan.

24) Eliminates the 2008-09 Community College COLA of 0.68% which is approximately \$39.8 million .

25) D ecreases funding for CCC reimbursable state mandates from \$4 million t o \$3 ,000, in an effort to defer payments to a future year.

26) Reduces, for FY 2008-09, Proposition 98 appropriations for child care by \$97 million. Included in this amount is a savings of \$15 million which is attributable to the delay in implementing new Regional Market Rates for child care providers, which were previously slated to go into effect March 1, 2009.

27) Reappropriates \$108 million in prior-year child development savings for the purpose of meeting a current year CalWORKS Stage 2 child care shortfall.

28) States that this measure addresses the fiscal emergency declared by the Governor on December 19, 2008, and a dds an urgency clause to the bill.

FISCAL EFFECT : Reduces overall Proposition 98 funding by \$7.3 billion in FY 2008-09, of which, \$2.3 billion are actual program reductions. Provides a total of \$50.7 billion to K-14 education. This funding level meets the Proposition 98 minimum funding guarantee.

The 2009-10 Budget Act provides \$55.3 billion for Proposition 98 which meets the minimum funding guarantee.

Analysis Prepared by : Misty Feusahrens and Sara Bachez /
BUDGET / (916) 319-2099

BILL ANALYSIS

SENATE RULES COMMITTEE	AB 347
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 651-1520 Fax: (916)	
327-4478	

THIRD READING

Bill No: AB 347
Author: Nava (D)
Amended: 9/6/07 in Senate
Vote: 27 - Urgency

SENATE EDUCATION COMMITTEE : 5-1, 6/27/07
AYES: Scott, Alquist, Romero, Simitian, Torlakson
NOES: Denham
NO VOTE RECORDED: Wyland, Maldonado, Padilla

SENATE APPROPRIATIONS COMMITTEE : 14-2, 7/9/07
AYES: Torlakson, Cox, Ashburn, Battin, Cedillo, Corbett,
Dutton, Florez, Kuehl, Oropeza, Ridley-Thomas, Steinberg,
Wyland, Yee
NOES: Aanestad, Runner
NO VOTE RECORDED: Simitian

ASSEMBLY FLOOR : 46-28, 6/5/07 - See last page for vote

SUBJECT : High school exit examination: intensive
instruction

SOURCE : Superintendent of Public Instruction

DIGEST : This bill implements a proposed settlement
agreement in the Valenzuela v. OConnell lawsuit by placing
conditions on the receipt of funding that requires school
districts to provide intensive instruction and services to
pupils who have not passed the high school exit examination
by the end of twelfth grade.

CONTINUED

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Senate Floor Amendments of 9/6/07 double-joint this bill
with SB 405 (Steinberg) because both bills amend Section
52378 of the Education Code.

Senate Floor Amendments of 9/4/07 clarify that the
provision of intensive instruction to pupils who have not
passed the exit exam is not optional to the school
district.

ANALYSIS : Under existing law, since the 2005-06 school
year, the state has required pupils to pass both the
English language arts and math portions of the California
High School Exist Exam (CAHSEE) in order to receive a high
school diploma (special education pupils are exempt from
this requirement until the 2007-08 school year). Pupils
initially take the exam in 10th grade and, if they have not
passed both portions of the exam, may retake the failed
portion(s) twice in the 11th grade, and up to three times
in the 12th grade. Students who have not passed the CAHSEE
by the end of 12th grade have a variety of options
available to continue working toward their diploma,
including a year of remedial supplemental instruction,
another year of enrollment in a comprehensive high school,
adult education, independent study, and charter school
enrollment.

A lawsuit filed by plaintiffs (Valenzuela v. O'Connell)

contends that pupils that have otherwise met graduation requirements but have not received a diploma due to a failure to pass one or both portions of the CAHSEE have been disadvantaged by an unequal education system that did not adequately teach the materials on the exam. While the suit has not halted the implementation of the CAHSEE as a graduation requirement, the Court of Appeals has recommended that the parties agree to a means of providing equal access and adequate remedial assistance to students that have not passed the exam. The bill reflects an effort to settle the suit.

AB 128 (Assembly Budget Committee), Chapter 234, Statutes of 2005, provided up to \$600 per eligible pupil (defined as any pupil, excluding special education pupils, who has failed one or both portions of the CAHSEE) to provide

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supplemental services for those pupils, including, but not limited to, activities such as individual or small group instruction, the hiring of teachers, counseling, diagnostic assessment, teacher training, and other activities. \$20 million was appropriated in the 2005-06 fiscal year for this purpose. AB 1802 (Assembly Budget Committee), Chapter 79, Statutes of 2006, limited the maximum per pupil grant to \$500 and specified that the first priority for funds were 12th graders that had yet to pass one or both portions of the exam, with funding for 11th graders as next in priority order if funds were available. This legislation also extended funding eligibility to special education pupils. \$70 million was appropriated in the 2006-07 fiscal year for this purpose.

This bill, as a condition of receipt of funds, requires districts to offer remedial services to pupils who have not met the requirement to pass the CAHSEE and who have failed one or both parts of the exam by the end of the 12th grade.

This bill also requires districts (1) to post notices in 10th, 11th, and 12th grade classrooms of pupil eligibility for CAHSEE remedial services beyond 12th grade, as specified, (2) to notify, in writing, pupils that have completed 12th grade but have not passed both portions of the CAHSEE of their eligibility of remedial services and of their right to file a complaint, (3) provide English learners who have not passed one or both portions of the CAHSEE by the end of 12th grade of their eligibility for English proficiency instruction, and (4) to employ strategies for remedial services that are specifically tailored toward the CAHSEE.

Further, districts participating in the Middle and High School Supplemental Counseling will be required to provide information to pupils about their eligibility for services beyond the 12th grade if they have not passed the CAHSEE by that time. The bill clarifies that districts must offer the intensive instruction, even if pupils may consider intensive instruction as one option. Compliance will be monitored by county superintendents of instruction.

The bill specifies that county superintendent oversight activities required by this bill will be funded through an

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existing source, Item 6110-266-0001 of the Budget Act of 2007, in an amount of up to \$1.5 million. This will not represent a new appropriation, as the amount in the item is believed to have sufficient resources. The allocation method will be determined by a statewide organization of county superintendents, subject to notification of the Legislature and approval by the Department of Finance.

This bill is double-jointed with SB 405 (Steinberg).

Comments

The 2007-08 Budget proposed \$72,752,000 for this purpose, with a maximum grant of \$520 per pupil. As of February of this year, there were 36,930 students in the class of 2006 who have not fully passed the CAHSEE and 12,725 students in the class of 2007 who have not passed, for a two-year total of 49,655.

Related Legislation

SB 405 (Steinber) expands the requirements of the Middle and High School Supplemental Counseling Program. (On Assembly Third Reading)

FISCAL EFFECT : Appropriation: No Fiscal Com.: Yes
Local: Yes

Fiscal Impact (in thousands)

<u>Major Provisions</u>	<u>2007-08</u>	<u>2008-09</u>
<u>2009-10</u>	<u>Fund</u>	

Cost pressure annually --	General*	-- \$2,600 to \$25,800
---------------------------	----------	------------------------

*Counts toward meeting the Proposition 98 minimum funding guarantee

SUPPORT : (Verified 7/12/07)

State Superintendent of Public Instruction (source)
American Federation of State, County and Municipal Employees, AFL-CIO

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Association of California School Administrators
California Federation of Teachers
Junior League of Orange County
Junior League of California State Public Affairs Committee

ASSEMBLY FLOOR :

AYES: Arambula, Bass, Beall, Berg, Brownley, Caballero, Charles Calderon, Carter, Coto, Davis, De La Torre, De Leon, DeSaulnier, Dymally, Eng, Evans, Feuer, Fuentes, Galgiani, Hancock, Hayashi, Hernandez, Huffman, Jones, Karnette, Krekorian, Laird, Leno, Levine, Lieber, Lieu, Ma, Mendoza, Mullin, Nava, Parra, Portantino, Price, Ruskin, Salas, Saldana, Solorio, Swanson, Torrico, Wolk, Nunez

NOES: Adams, Aghazarian, Anderson, Benoit, Berryhill, Blakeslee, Cook, DeVore, Duvall, Fuller, Gaines, Garcia, Garrick, Horton, Jeffries, Keene, La Malfa, Maze, Niello, Plescia, Richardson, Sharon Runner, Silva, Spitzer, Strickland, Tran, Villines, Walters

NO VOTE RECORDED: Emmerson, Houston, Huff, Nakanishi, Smyth, Soto

NC:cm 9/6/07 Senate Floor Analyses

SUPPORT/OPPPOSITION: SEE ABOVE

**** END ****

BILL ANALYSIS

SENATE COMMITTEE ON EDUCATION
Jack Scott, Chair
2007-2008 Regular Session

BILL NO: SB 132
AUTHOR: Committee on Education (Scott, Chair)
AMENDED: March 26, 2007
FISCAL COMM: No HEARING DATE: April 11, 2007
URGENCY: No CONSULTANT: James Wilson

SUBJECT : Omnibus Education

SUMMARY

This bill is the annual Education "clean-up" bill that makes various non- controversial revisions to statute.

BACKGROUND

Every year the Superintendent of Public Instruction sponsors an omnibus code maintenance bill to correct errors, resolve conflicts, delete obsolete references and make other non-controversial changes. By tradition, if any member, or staff member of the Legislature, Department of Education or Department of Finance, objects to a provision it will be taken out of the bill.

ANALYSIS

This bill makes various changes to the codes to correct cross references, errors and delete obsolete provisions. A section by section summary of the bill's provisions is attached.

STAFF COMMENTS

Proposed Amendments.

- 1) An objection has been raised to the amendment to Section 47605.1 of the Education Code that is in Section 16 of the bill; therefore, Section 16 should be removed from the bill. Strike pages 25, 26 and lines 1 through 14 on page 27.
- 2) A concern has been raised that the technical

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Page 2

amendments replacing "any" with "a" may be misinterpreted to suggest that the section applies to only one school, for example, therefore, the technical amendment should be reversed and prior language restored, as follows:

- a) On Page 4, line 12, strike "a" and insert "any"
- b) On Page 10, line 11, strike "a" and insert "any"
- c) On Page 10, line 39, strike "a" and insert "any"
- d) On Page 13, line 5, strike "a" and insert "each"
- e) On Page 15, line 18, strike "a" and insert "any"
- f) On Page 16, line 18, strike "a" and insert "any"
- g) On Page 16, line 20, strike "a" and insert "any"
- h) On Page 16, line 34, strike "a" and insert "the"

SUPPORT

State Superintendent of Public Instruction (sponsor)

OPPOSITION

None received.

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Page 3

SB 132 (Senate Education Committee)

SECTION-BY-SECTION SUMMARY

Section 1. Education Code Section 1240

This is the first of two sections (Sections 1 and 6) that are related to the Williams v. California settlement. Amendments conform with another Williams trailer bill, Chapter 704 of 2006 specifying which schools are in the target deciles 1 to 3 for different fiscal years.

Section 2. Education Code Section 1242.5

Corrects fiscal year reference in section dealing with review of actual costs of Williams required site visits by County Offices

Section 3. Education Code Section 17608.

Corrects naming section of Healthy Schools Act to remove cross reference that points to nonexistent article of the Health and Safety Code.

Section 4. Education Code Section 18830

This is the first of several sections (Sections 4, 7, 8, 14, 15, 18 and 21) that revise California's school librarian title from "library media teacher" to "teacher librarian". This change conforms the title to that which is currently used in much of the United States

Section 5. Education Code Section 35035

Corrects cross reference from Education Code Section 39656, which was repealed, to Section 17604.

Section 6. Education Code Section 44258.9

Amendments conform with Williams v. California trailer bill, Chapter 704 of 2006 specifying which schools are in the target deciles 1 to 3 for different fiscal years.

Section 7. Education Code Section 44269

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Revises California's school librarian title from "library media teacher" to "teacher librarian". See explanation for Section 4.

Section 8. Education Code Section 44270

Revises California's school librarian title from "library media teacher" to "teacher librarian". See explanation for Section 4.

Section 9. Education Code Section 44300

This is the first of several sections (Sections 9, 10, 11, 12, 13 and 20) that delete obsolete language related to the Pre-Intern Program. With the implementation of the federal No Child Left Behind Act (NCLB), it was determined that Pre-Interns did not meet the federal and state definition of a highly qualified teacher. Specifically, Pre-Interns did not meet the subject matter requirement. Consequently, the program funding ended in June of 2005.

Section 10. Education Code Section 44302

Deletes references to the Pre-Intern Program. See explanation for Section 9.

Section 11. Repeal of Article 5.6 (commencing with Education Code Section 44305) of Chapter 2 of Part 28

Deletes references to the Pre-Intern Program. See explanation for Section 9.

Section 12. Education Code Section 44386

Deletes references to the Pre-Intern Program. See explanation for Section 9.

Section 13. Education Code Section 44506

Deletes references to the Pre-Intern Program. See explanation for Section 9.

Section 14. Education Code Section 44868

Revises California's school librarian title from "library media teacher" to "teacher librarian". See explanation

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for Section 4.

Section 15. Education Code Section 44869

Revises California's school librarian title from "library media teacher" to "teacher librarian". See explanation for Section 4.

Section 16. Education Code Section 47605.1

This section conforms the notice requirements of charter school satellite facilities in another county to the notice requirements for the establishment of charter schools.

Section 17. Education Code Section 49452.8

Clarifies that funds provided in the 2006 Budget Act under Item 6110-268-0001 for oral health assessments continue to be available to offset any resulting reimbursable state mandate costs authorized by the Commission on State Mandates.

Section 18. Education Code Section 52055.625

Revises California's school librarian title from "library media teacher" to "teacher librarian". See explanation for Section 4.

Section 19. Education Code Section 52379

Corrects wording in the Middle & High School Supplemental Counseling Program to specify that school sites with an enrollment in grades 7 through 12 of 101 through and including 200 pupils receive a minimum grant of \$10,000.

Section 20. Education Code Section 56351.5

Deletes references to the Pre-Intern Program. See explanation for Section 9.

Section 21. Education Code Section 60242

Revises California's school librarian title from "library media teacher" to "teacher librarian". See explanation for Section 4.

Section 22. Education Code Section 60640

Current law requires the Superintendent of Public Instruction (SPI) to annually release at least 25 percent of test items from previous year's administration of the standards-based achievement test of the Standardized Testing and Reporting (STAR) Program. This amendment allows the Superintendent to release items from previous years thereby allowing the release of questions that more fully cover the standards, range of difficulty and the variety of ways standards can be assessed.

Section 23. Education Code Section 99237

Eliminates the term "next monthly" in the withholding of funds in the Mathematics & Reading Professional Development Program. Funds are not withheld from the next principal apportionment if the local agency has filed an appeal with the Education Audit Appeals Panel. When processing audit repayments, the Department of Education offsets the principal apportionment, not specific monthly payments.

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5 USC § 6103 - Holidays

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Current through Pub. L. [112-283](#). (See [Public Laws for the current Congress](#).)

(a) The following are legal public holidays:

New Year's Day, January 1.

Birthday of Martin Luther King, Jr., the third Monday in January.

Washington's Birthday, the third Monday in February.

Memorial Day, the last Monday in May.

Independence Day, July 4.

Labor Day, the first Monday in September.

Columbus Day, the second Monday in October.

Veterans Day, November 11.

Thanksgiving Day, the fourth Thursday in November.

Christmas Day, December 25.

(b) For the purpose of statutes relating to pay and leave of employees, with respect to a legal public holiday and any other day declared to be a holiday by Federal statute or Executive order, the following rules apply:

(1) Instead of a holiday that occurs on a Saturday, the Friday immediately before is a legal public holiday for—

(A) employees whose basic workweek is Monday through Friday; and

(B) the purpose of section [6309](#) [\(1\)](#) of this title.

(2) Instead of a holiday that occurs on a regular weekly non-workday of an employee whose basic workweek is other than Monday through Friday, except the regular weekly non-workday administratively scheduled for the employee instead of Sunday, the workday immediately before that regular weekly nonworkday is a legal public holiday for the employee.

(3) Instead of a holiday that is designated under subsection (a) to occur on a Monday, for an employee at a duty post outside the United States whose basic workweek is other than Monday through Friday, and for whom Monday is a regularly scheduled workday, the legal public holiday is the first workday of the workweek in which the Monday designated for the observance of such holiday under subsection (a) occurs.

This subsection, except subparagraph (B) of paragraph (1), does not apply to an employee whose basic workweek is Monday through Saturday.

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(c) January 20 of each fourth year after 1965, Inauguration Day, is a legal public holiday for the purpose of statutes relating to pay and leave of employees as defined by section [2105](#) of this title and individuals employed by the government of the District of Columbia employed in the District of Columbia, Montgomery and Prince Georges Counties in Maryland, Arlington and Fairfax Counties in Virginia, and the cities of Alexandria and Falls Church in Virginia. When January 20 of any fourth year after 1965 falls on Sunday, the next succeeding day selected for the public observance of the inauguration of the President is a legal public holiday for the purpose of this subsection.

(d)

(1) For purposes of this subsection—

(A) the term “compressed schedule” has the meaning given such term by section [6121 \(5\)](#); and

(B) the term “adverse agency impact” has the meaning given such term by section [6131 \(b\)](#).

(2) An agency may prescribe rules under which employees on a compressed schedule may, in the case of a holiday that occurs on a regularly scheduled non-workday for such employees, and notwithstanding any other provision of law or the terms of any collective bargaining agreement, be required to observe such holiday on a workday other than as provided by subsection (b), if the agency head determines that it is necessary to do so in order to prevent an adverse agency impact.

[\[1\]](#) See References in Text note below.

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CFR > Title 39 > Chapter I > Subchapter C > Part 111 > Section 111.1

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39 CFR 111.1 - Mailing Standards of the United States Postal Service, Domestic Mail Manual; incorporated by reference of regulations governing domestic mail services.

There are 9 Updates appearing in the Federal Register for 39 CFR 111. Select the tab below to view, or [View eCFR \(GPOAccess\)](#)

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§ 111.1

Mailing Standards of the United States Postal Service, Domestic Mail Manual; incorporated by reference of regulations governing domestic mail services.

Section 552(a) of title 5, U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that “* * * matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.” In conformity with that provision, and with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference in this part, the Mailing Standards of the United States Postal Service, Domestic Mail Manual, a looseleaf document published and maintained by the Postal Service.

[62 FR 14827, Mar. 28, 1997, as amended at 69 FR 59139, Oct. 4, 2004; 70 FR 14535, Mar. 23, 2005]

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1.0 About the Domestic Mail Manual

1.1 Content of the DMM

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM) contains the basic standards of the United States Postal Service (USPS) governing its domestic mail services; descriptions of the mail classes and extra services and conditions governing their use; and standards for price eligibility and mail preparation. Domestic mail is classified by size, weight, content, service, and other factors.

1.2 Copies of the DMM

The DMM is distributed to selected Post Offices and is available online on Postal Explorer (pe.usps.com). Copies of the DMM may be inspected during normal business hours at USPS Headquarters; area and district offices. A copy is also filed at the Office of the Federal Register, National Archives and Records Administration. The public may buy copies by subscription from the Superintendent of Documents, U.S. Government Printing Office (see [8.1](#) for address).

1.3 Revisions to the DMM

USPS may change the standards in the DMM. Substantive revisions are published in the *Postal Bulletin* and, when appropriate, the *Federal Register*.

1.4 Terms in the DMM

Terms in the DMM referring to the singular also apply to the plural, unless the context indicates otherwise. The term *postmaster* also applies to an officer-in-charge if the postmaster position is vacant and, in district host cities, to the district manager.

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2.0 Domestic Mail

2.1 Definition of “Domestic”

Domestic mail is mail transmitted within, among, and between the United States of America, its territories and possessions, Army Post Offices (APOs), fleet Post Offices (FPOs), and the United Nations, NY. For this standard, the term “territories and possessions” comprises the following:

American Samoa
Manua Island, Swain's Island, Tutuila Island

Guam

Northern Mariana Islands,
Commonwealth of the
Rota Island, Saipan Island, Tinian Island

Puerto Rico, Commonwealth of

U.S. Virgin Islands
St. Croix Island, St. John Island, St. Thomas Island

Wake Atoll
Wake Island

2.2 Mail Treated as Domestic

Mail originating in the United States of America, its territories and possessions, APOs, FPOs, and the United Nations, NY, for delivery in the Freely Associated States, and mail originating in the Freely Associated States for delivery within, among, and between the Freely Associated States and the United States of America, its territories and possessions, APOs, FPOs, and the United Nations, NY, is treated as if it were domestic mail. The term "Freely Associated States" comprises the following:

Marshall Islands, Republic of the
Ebeye Island
Kwajalein Island
Majuro Island

Micronesia, Federated States of
Chuuk (Truk) Island
Kosrae Island
Pohnpei Island
Yap Island

Palau, Republic of
Koror Island

2.3 International Mail

International mail is mail addressed to or received from foreign countries, except under 2.2. Provisions for international mail are published in the [International Mail Manual](#).

2.4 Customs Forms Required

2.4.1 Items Weighing 16 Ounces or More

Except for items sent via Express Mail, or Priority Mail combined with Registered Mail service, any mailpiece (regardless of contents) weighing 16 ounces or more must bear a properly completed PS Form 2976, Customs Declaration CN 22, or, if the customer prefers, a PS Form 2976-A, Customs Declaration and Dispatch Note – CP 72, when the item is:

- a. Sent from the United States, Puerto Rico, or the U.S. Virgin Islands to the ZIP Code destinations listed in the table below.
- b. Sent from the ZIP Code destinations listed in the table below to the United States, Puerto Rico, or the U.S. Virgin Islands.
- c. Sent between two different destinations listed in the "Territory, Possession, or Freely Associated States" column in the table below.
- d. Sent within American Samoa, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, or the Republic of the Marshall Islands. This standard does not apply to items sent within Guam or Palau.

ZIP CODE	TWO-LETTER STATE ABBREVIATION	City	TERRITORY, POSSESSION, OR FREELY ASSOCIATED STATE
96799	AS	PAGO PAGO	AMERICAN SAMOA
96910	GU	HAGATNA	GUAM
96912	GU	DEDEDO	GUAM
96913	GU	BARRIGADA	GUAM
96915	GU	SANTA RITA	GUAM
96916	GU	MERIZO	GUAM
96917	GU	INARAJAN	GUAM
96919	GU	AGANA HEIGHTS	GUAM
96921	GU	BARRIGADA	GUAM
96923	GU	MANGILAO	GUAM
96928	GU	AGAT	GUAM
96929	GU	YIGO	GUAM
96931	GU	TAMUNING	GUAM
96932	GU	HAGATNA	GUAM
96939 96940	PW	PALAU	PALAU
96941	FM	POHNPEI	FEDERATED STATES OF MICRONESIA
96942	FM	CHUUK	FEDERATED STATES OF MICRONESIA
96943	FM	YAP	FEDERATED STATES OF MICRONESIA
96944	FM	KOSRAE	FEDERATED STATES OF MICRONESIA
96950	MP	SAIPAN	COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
96951	MP	ROTA	COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
96952	MP	TINIAN	COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
96960	MH	MAJURO	REPUBLIC OF THE MARSHALL ISLANDS
96970	MH	EBEYE	REPUBLIC OF THE MARSHALL ISLANDS

2.4.2 Items Containing Goods

Regardless of mail class or weight, items containing goods (i.e., contents other than documents; see IMM 123.63 for “document” eligibility) must bear a properly completed PS Form 2976, Customs Declaration CN 22, or, if the customer prefers, a PS Form 2976-A, Customs Declaration and Dispatch Note – CP 72, when the items are sent to the United States or Puerto Rico from the ZIP Code destinations listed in the table in 2.4.1, or from the U.S. Virgin Islands.

2.4.3 Improperly Prepared Items

Mailpieces deposited without a properly completed customs form under 2.4.1 and 2.4.2 will be returned to the sender.

2.4.4 Overseas Military Mail

For determining customs declarations' required usage when mailing to or from APO, FPO, or DPO addresses, see [703.2.3.6](#) through [703.2.3.8](#).

2.4.5 Items Eligible for Deposit or Pickup

Items under [2.4.1](#) bearing a computer-generated customs form (e.g., using Click-N-Ship service, an authorized PC Postage vendor, or the USPS Web Tools system) may be deposited through any of the following methods, provided postage is paid by a means other than the use of postage stamps:

- a. In a mailbox bearing a return address that matches the address at the point of pickup, when the customer or business is known to reside or do business at that location.
- b. Through Pickup on Demand service.
- c. Through Package Pickup service.
- d. At a Postal Service retail counter.
- e. Into a Postal Service lobby drop.
- f. In a collection box.
- g. At a Contract Postal Unit (CPU).
- h. At a USPS Approved Shipper location.

2.4.6 Items Not Eligible for Deposit or Pickup

Except for items under [2.4.7](#), customers must present the following items requiring a customs form to an employee at a Post Office retail service counter. Deposit and pickup methods listed items under [2.4.5](#) are prohibited. The Postal Service will return these improperly presented items to the sender for proper entry and acceptance:

- a. Any item bearing a customs form and paid with only postage stamps.
- b. Any item bearing a handwritten customs form.
- c. Any item bearing a customs form that was not computer-generated.

2.4.7 Items Paid with a Permit Imprint

Items requiring a customs form and paid with permit imprint may be entered at a business mail entry unit (BMEU) regardless if the customs form is computer-generated or handwritten.

2.4.8 Freely Associated States—Items Requiring an Export License

Items sent to the Freely Associated States listed in [2.2](#) that require an export license under [2.5.8](#), regardless of weight or class of mail, always require a PS Form 2976-A. See [IMM 530](#) for additional information on export licenses.

2.5 Foreign Trade Regulations—U.S. Department of Commerce, U.S. Bureau of the Census

This section describes the various U.S. Department of Commerce, U.S. Bureau of the Census requirements when shipping goods to, from, and between U.S. territories, possessions, and Freely Associated States. Shipments to APO/FPO/DPO addresses are not subject to these requirements. Customers may be subject to civil and criminal penalties if they fail to electronically file their export information when required, or if they fail to comply with the Foreign Trade Regulations in any other way. Refer to [IMM 520](#) for additional standards about the Census Bureau's requirements. The following are not subject to these requirements:

- a. Items mailed to or from APO/FPO/DPO addresses.
- b. Items mailed from the Freely Associated States (see [608.2.2](#)).
- c. Items mailed from the U.S. Virgin Islands to the United States or Puerto Rico.
- d. Items mailed to or from American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands.

2.5.1 Mandatory Electronic Filing—U.S. Territories, Possessions, and Freely Associated States

Under the authority of 13 U.S.C. Chapter 9, as amended by the Foreign

Under the authority of 19 U.S.C. Chapter 9, as amended by the Foreign Relations Authorization Act of 2002, P.L. 107-228, U.S. Census Bureau regulations require electronic filing of export information through the U.S. Census Bureau's Automated Export System or AESDirect website for certain or AESDirect website for certain shipments of goods. Electronic filing of export information is required when any of the following applies, subject to certain exemptions (see 2.5.4):

- a. The item requires an export license under U.S. law when sent to the Freely Associated States. See 2.5.5 and 2.5.6.
- b. One or more classes of goods (per Schedule B Export Codes at www.census.gov/foreign-trade/schedules/b) within the item is valued at more than \$2,500 and the item is mailed as follows:
 1. From Puerto Rico to the United States or U.S. Virgin Islands.
 2. From the United States to Puerto Rico or the U.S. Virgin Islands.
 3. From the United States, Puerto Rico, or the U.S. Virgin Islands to the Freely Associated States.

2.5.2 Value Criterion

Following are three examples to illustrate the value criterion defined in 2.5.1:

- a. A package contains one *mechanically* operated watch (Schedule B item # 9101.11.0000) valued at \$2600. The total value of goods to be mailed is \$2600, and the value of all items within the same Schedule B number is over \$2500. Consequently, electronic filing and an ITN *would* be required (unless an exemption applies).
- b. A package contains one *mechanically* operated watch (Schedule B item # 9101.11.0000) valued at \$2400, and one *electronically* operated watch (Schedule B item # 9101.91.0000) valued at \$2400. The total value of goods to be mailed is \$4800, but no group of items within the same Schedule B number is valued over \$2500. Consequently, electronic filing and an ITN *would not* be required, because the mechanical watch and electronic watch are in different Schedule B groups.
- c. A package contains two *mechanically* operated watches (Schedule B item # 9101.11.0000) one valued at \$1400 and one valued at \$1500. The total value of goods to be mailed is \$2900 and the value of all items within the same Schedule B number is over \$2500. Consequently, electronic filing and an ITN *would* be required, unless an exemption applies.

2.5.3 How to File Electronic Export Information and Obtain an Internal Transaction Number

For additional information on electronic filing, call the U.S. Census Bureau's toll-free information hotline at 800-549-0595, option #3. To file electronic export information through AESDirect and obtain an Internal Transaction Number (ITN), customers should use the following steps:

- a. Go to www.aesdirect.gov.
- b. Register for an AESDirect account or log into your existing account.
- c. Follow the instructions for the Automated Export System Certification Quiz.
- d. The Port of Export code for shipping through the Postal Service is 8000.
- e. The Mode of Transport is Mail.
- f. Leave the carrier as 'SCAC/IATA' and the conveyance name fields blank.
- g. After successfully filing electronic export information, AESDirect will provide an alphanumeric Internal Transaction Number (ITN) as confirmation. The ITN consists of the letters AES followed by the ITN: for example, AES X20080930987654.

2.5.4 AES Downtime Citation

If electronic information filing is required but U.S. Census Bureau's Automated Export System or AESDirect website is unavailable, the goods may be shipped but the customer is responsible for providing the appropriate AES Downtime Citation instead of an ITN. This citation includes the word "AESDOWN," the customer's AES filer identification number, and the date: for example, "AESDOWN 123456789 09/20/2008." If the Automated Export System system

AES DOWNTIME 123456789 09/30/2009. If the Automated Export System System is down, call 800-549-0595, option 1.

2.5.5 AES Exemption

In many circumstances, electronic export information filing and an Internal Transaction Number (ITN) may not be required. In these circumstances, and only when a customs declaration form is required under 2.4, customers are responsible for presenting an applicable AES Exemption on the customs declaration form upon mailing. Customers may forgo this requirement if no customs declaration form is required. When a customs declaration form is used, customers should enter the applicable AES Exemption on the customs declaration form. Customers must only enter one AES Exemption per addressed mailpiece. When multiple AES Exemptions may apply, the mailer may select any one that applies. For more information on these and other exemptions, customers should consult Appendix C of the Foreign Trade Regulations, 15 C.F.R. Part 30. The following is a list of the most commonly applicable AES Exemption for items mailed to, from, or between destinations under 2.0.

- a. Regardless of value, for all goods shipped to, from, or between the following U.S. Territories, use NOEEI 30.2(d)(2):
 1. American Samoa.
 2. Guam Island.
 3. Northern Mariana Islands.
- b. For items destined to the Freely Associated States listed in 2.2, customers may apply "NOEEI 30.37(a)" if the value of each class of goods is \$2,500 or less, provided an export license is not required (see 2.5.7 and 2.5.8).

2.5.6 Placement of ITN, AES Downtime Citation, or AES Exemption

If no customs declaration form is required (e.g., items sent between the United States, Puerto Rico, and the U.S. Virgin Islands), no other action for recording the ITN or AES Downtime Citation on the package is required. However, when a shipment requires an ITN, or AES Downtime Citation, or AES Exemption, and a PS Form 2976-A is used under 2.4; it is the customer's responsibility to

legibly write the ITN, AES Downtime Citation, or AES Exemption as follows:

- a. On the September 2012 edition of PS Form 2976-A, *Customs Declaration and Dispatch Note - CP72* (large white form), customers should write one ITN, AES Downtime Citation, or applicable AES Exemption in block 10.
- b. On the May 2009 and January 2009 editions of PS Form 2976-A, *Customs Declaration and Dispatch Note - CP72* (large white form), customers should write one ITN, AES Downtime Citation, or applicable AES Exemption at the top of the form or in any clear space. Avoid writing over the barcode on the form.
- c. On editions of PS Form 2976-A printed before January 2009, customers should write one ITN, AES Downtime Citation, or applicable AES Exemption at the top of the form or in any clear space. Avoid writing over the barcode on the form.

2.5.7 Additional Standards for the Freely Associated States

The Freely Associated States listed in 2.2 are foreign destinations for the purposes of the Foreign Trade Regulations and other laws and regulations governing imports and exports. As such, certain goods shipped to these destinations from the United States, Puerto Rico, the U.S. Virgin Islands, or other U.S. territories may require an export license. To determine if an export license is required, go to <http://www.export.gov/regulation/index.asp> or call: 1-800-USA-TRAD(E) (1-800-872-8723).

2.5.8 When an Export License Is Required

When an export license is required under 2.5.7, a PS Form 2976-A is always required. The electronically generated License Number must appear in Block 17 and an ITN or AES Downtime Citation (see 520) must appear in block 11 on the May 2009 and January 2009 editions of PS Form 2976-A, *Customs Declaration and Dispatch Note - CP72*, or block 10 on the September 2012

edition of PS Form 2976-A. See [IMM 520](#) and [530](#) for complete requirements. In addition, it is the mailer's responsibility to comply with the U.S. Census Bureau's requirements for filing electronic export information, as described in [2.5.1](#) and [2.5.2](#).

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3.0 Post Offices and Holidays

3.1 Management of Post Offices

3.1.1 Establishment of Post Offices

The USPS establishes and maintains Post Offices, stations, and branches for customer convenience.

3.1.2 Closing or Consolidation of Post Offices

Under 39 U.S. Code (USC) 404(b), any decision to close or consolidate a Post Office must be based on certain criteria. These include the effect on the community served; the effect on employees of the Post Office; compliance with government policy established by law that the USPS must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where Post Offices are not self-sustaining; the economic savings to the USPS; and other factors that the USPS determines necessary. In addition, certain mandatory procedures apply.

3.1.3 Procedures for Post Offices

The *Postal Operations Manual* contains USPS rules for discontinuing, consolidating, or suspending service at an existing Post Office or other postal facility; changing a Post Office or other postal facility name; setting public business hours of postal facilities; and using bulletin boards and handling lost articles found in public areas of postal facilities.

3.1.4 Military Post Offices

Military Post Offices (MPOs) are branches of a U.S. civil Post Office, operated by the Army, Navy, Air Force, or Marine Corps to serve military personnel overseas or aboard ships. The term includes Army Post Offices (APOs) for the U.S. Army and the U.S. Air Force and fleet Post Offices (FPOs) for the U.S. Navy and the U.S. Marine Corps. MPOs provide postal service for military personnel where the U.S. civil postal service does not operate and a military situation requires the service. MPOs are established or discontinued by the USPS only on request of the military department that operates them. Notice of these actions is published in the *Postal Bulletin*. Military Post Offices do not verify and accept bulk or discounted-price mail; such mailings must be deposited at (nonmilitary) U.S. Post Offices.

3.2 Holiday Service

[Exhibit 3.2a](#) and [Exhibit 3.2b](#) shows the national holidays observed by the USPS and the service levels provided on those holidays for retail window, Post Office box, firm call, delivery, and collection services.

a. Holidays widely observed:

Exhibit 3.2a Holidays Widely Observed

New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day

Day of Holiday and Surrounding Days	Delivery Services						COLLECTION SERVICES
	RETAIL WINDOW	P.O. BOX	FIRM CALL	Business	Residential	Express Mail	
Friday (holiday)	None	Holiday	None	None	None	Holiday	Time decal
Saturday	Limited	Normal	Normal	Normal	Normal	Normal	Normal
Sunday	None	Normal	None	None	None	Normal	None

Friday	Normal	Normal	Normal	Normal	Normal	Normal	Normal
Saturday (holiday)	None	Holiday	None	None	None	Holiday	Time decal
Sunday	None	Normal	None	None	None	Normal	Time decal
Saturday	Limited	Normal	Normal	Normal	Normal	Normal	Normal
Sunday (holiday)	None	Normal	None	None	None	Normal	None
Monday	None	Holiday	None	None	None	Holiday	Time decal ¹
Saturday	Limited	Normal	Normal	Normal	Normal	Normal	Normal
Sunday	None	Normal	None	None	None	Normal	None
Monday (holiday)	None	Holiday	None	None	None	Holiday	Time decal ¹
Tuesday, Wednesday, or Thursday (holiday)	None	Holiday	None	None	None	Holiday	Time decal
Preceding Day	Normal	Normal	Normal	Normal	Normal	Normal	Normal

1. When a holiday is observed on Monday and no residential collection is scheduled on Sunday, a full residential collection may be provided on the Monday holiday. Consecutive days without collections should be avoided.

b. Holidays not widely observed:

Exhibit 3.2b Holidays Not Widely Observed

Martin Luther King, Jr.'s Birthday; Presidents Day; Columbus Day; and Veterans Day

Day of Holiday and Surrounding Days	Delivery Services						COLLECTION SERVICES
	RETAIL WINDOW	P.O. BOX	FIRM CALL	Business	Residential	Express Mail	
Saturday	Normal	Normal	Normal	Normal	Normal	Normal	Normal
Sunday	None	Normal	None	None	None	Normal	None
Monday (holiday)¹	Limited	Sunday	Limited	None	None	Holiday	Time decal ²

1. Veterans' Day, November 11, is the only movable holiday in the group of holidays designated as not widely observed; the other three holidays listed in section B are always observed on Mondays. When Veterans' Day falls on any day except Sunday, the services provided on that holiday are the same as those shown for Monday. When Veterans' Day falls on Sunday, the service levels are the same as those shown for Sunday; the USPS, however, observes the holiday on Monday and treats it as a Monday holiday.

2. When a holiday is observed on Monday and no residential collection is scheduled on Sunday, a full residential collection may be provided on the Monday holiday. Consecutive days without collections should be avoided.

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4.0 Philatelic (Stamp Collecting) Services

4.1 Basic Standards

4.1.1 Philatelic Policy

A single national USPS policy governs postage stamps and postal stationery, including their release, sale, and discontinuance.

4.1.2 Stamp Subjects

Subjects for commemorative postage stamps and postal stationery may be proposed by the public through correspondence to the Citizens' Stamp Advisory Committee (see 8.1 for address). The Committee reviews suggestions and makes recommendations to the postmaster general, who makes the final selections.

4.1.3 Philatelic Availability

Stamps, postal stationery, and philatelic products are sold at various types of

postal retail facilities. Post Offices establish special temporary retail stations to provide philatelic services and to sell commemorative stamps and philatelic products at activities of significant public or philatelic interest. Temporary philatelic stations may be authorized by the postmaster. Under specific circumstances, the USPS may limit or set conditions on the purchase of stamps and other forms of postage or postal stationery.

4.1.4 Philatelic Mail Orders

Mail orders for postage stamps and other philatelic items must be directed to Stamp Fulfillment Services (see 8.1 for address). Post Offices do not fill mail orders for stamps and other philatelic items other than orders under the stamps-by-mail program and for locally precanceled stamps. Customers must provide a self-addressed stamped envelope for the return of precanceled stamps.

4.1.5 Philatelic Postmarking

Postmarking for philatelic (stamp collecting) purposes is provided at the request of collectors or cover servicers. The *Postal Operations Manual* contains USPS policy on philatelic postmarking, including cancellation devices, types of postmarks or cancellations, first day covers, and service conditions.

4.2 Special Cancellations

4.2.1 Description of Special Cancellations

Special cancellations are inkjet cancellations in which a caption publicizing an event is used to cancel mail. Special cancellations may be used only in Post Offices with 190 revenue units for canceling large volumes of mail. Special cancellations are authorized only if the scheduled observance is for a national purpose for which Congress has made an appropriation, or is of general public interest and importance. Special cancellations are approved for a definite period not to exceed 6 months, and must not be conducted for private gain or profit.

4.2.2 Prohibitions for Special Cancellations

Special cancellations are not authorized for events of interest primarily to a particular local group; for fraternal, political, religious, service, commercial, or trade organizations; for campaigns or events promoting the sale or use of private products or services; for idea or slogan promotions not directly connected with the event of general public interest and importance; for Post Office anniversaries; for recruitment programs; or for events that occur when all canceling machines in the Post Office are scheduled for other special cancellations.

4.2.3 Applying to Use Special Cancellations

Submit a written letter of request, on the requesting organization's letterhead, to the manager, Product Classification (see 8.1 for address) at least 4 months before the special cancellation will be used. The letter must include the following information:

- a. The name, address, and telephone number of the sponsor.
- b. Advance promotional materials that include a complete description and schedule of the event.
- c. Evidence that the event is not conducted for private gain or profit.
- d. The wording of the special cancellation, which must be standardized and approved by the sponsor's national headquarters. Space available for the wording is limited to three lines of not more than 20 letters, numbers, or spaces each. Illustrations or designs cannot be used. The wording must directly reflect the event to be commemorated.
- e. The Post Office name(s) where the cancellation is to be used.
- f. The requested time period of use.

4.2.4 Sponsor Payment for Special Cancellations

The sponsor must pay the costs incurred for installing and maintaining the special cancellation.

4.2.5 Time Limit on Use of Special Cancellations

Use of a special cancellation may not exceed 6 months. A special cancellation

approved on an annual basis is limited to one 60-day period for each year. A request for reuse of recurring annual cancellations must be submitted 4 months before the date the cancellation will be used again. For national cancellations, the national sponsor may submit a single request.

4.2.6 Revocation of Special Cancellations

The USPS may curtail or revoke the use of any special cancellation when it is necessary to use special postmarking for USPS purposes.

4.2.7 Information about Special Cancellations

More information about special cancellations is in the *Postal Operations Manual*.

4.2.8 Mail Submitted for Special Cancellations

A mailer must affix First-Class Mail postage to mail that the mailer wants canceled with a special cancellation. The mail must bear a complete address. Stamps issued by foreign countries are not permitted on the mail. Mail bearing

the special cancellation will not be enclosed in another envelope for return even if a postage-paid envelope is provided by the customer. Damaged envelopes canceled with a special cancellation are not replaced.

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5.0 Private Express Statutes

5.1 Private Express Statutes

5.1.1 Legal Foundation

By the laws known as the Private Express Statutes, Congress has generally conferred on the USPS the exclusive right to carry letters for others over post routes. USPS regulations under the Private Express Statutes are in the Code of Federal Regulations, 39 CFR 310 and 320, as amended by final rules published in the *Federal Register*. These regulations take precedence over all prior rulings and USPS publications. Copies of the regulations are available from the manager, Product Classification, USPS Headquarters (see 8.1 for address).

5.1.2 Definition of a Letter for Private Express

For the Private Express Statutes, a *letter* is a message directed to a specific person or address and recorded in or on a tangible object. A *message* consists of any information or intelligence that can be recorded on tangible objects including, but not limited to, paper in sheet or card form, recording disks, and magnetic tapes. Certain matter is excluded from the definition of letter, e.g.: telegrams; checks and certain other instruments shipped to, from, or between financial institutions; newspapers; and periodicals. The regulations detail exclusions.

5.1.3 Postage for Private Express

If the proper postage is paid, letters may be privately carried without violating the Private Express Statutes. The regulations detail compliance. Under certain circumstances, letters may be privately carried without paying postage. The principal exceptions cover letters sent with, and related in all substantial respects to, some part of the cargo or to the ordering, shipping, or delivering of the cargo; letters carried by the senders or the recipients, or by their regular salaried employees; and letters carried to or from a postal facility where they are to be or have been carried in the mail. The regulations detail exceptions.

5.1.4 Suspensions of Private Express Statutes

Limited suspensions of the Private Express Statutes specify the conditions under which: (a) private couriers may carry data-processing materials, international ocean carrier documents, extremely urgent letters, and advertisements incidental to the shipment of accompanying merchandise or periodicals; and (b) universities and colleges may carry the letters of their bona fide student and faculty organizations. Carriers wanting to use the suspension for data-processing materials must file a notice of their intention on a form available from the manager, Product Classification.

available from the manager, Product Classification.

5.1.5 Violations of Private Express Statutes

Product Classification, USPS Headquarters, is responsible for reviewing initial reports of possible violations of the Private Express Statutes. When warranted by the facts, possible violations are forwarded to the USPS General Counsel for further action.

5.1.6 Legal Advice for Private Express

The public and USPS employees can obtain authoritative advice on the Private Express Statutes, including written advisory opinions, by contacting the Senior Counsel, Ethics and Information, USPS Headquarters (see 8.1 for address and telephone number).

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6.0 Complaints and Postal Law Violations

6.1 Consumer Complaints and Inquiries

Any postal customer may complain or inquire about postal products, services, or employees at any Post Office or directly to the USPS Consumer Advocate (see 8.1 for address). A complaint or inquiry may be made in person, by telephone, by e-mail, or by letter. A complaint or inquiry about the handling of a specific piece of mail should include the related envelope or wrapper and copies of all postal forms filed. A customer who is dissatisfied with the local handling of a complaint or inquiry may send a written appeal to the Consumer Advocate. A court of law can require such appeal as a legal prerequisite for hearing a customer's suit against the USPS.

6.2 Postal Law Violations

Instructions on mail security as it relates to unauthorized opening, inspection, tampering, or delay of mail are in *Administrative Support Manual 274*. Information and complaints on a possible postal law violation must be sent to the appropriate address according to the ZIP Code ranges shown below:

ZIP CODES	ADDRESS
003-079, 08005, 08006, 08008, 08050, 08087, 08092, 08501-08504, 08506-08510, 08512-08514, 08516, 08517, 08519-08553, 08555-08561, 08600-08639, 08642-08691, 087-098, 100-149	Postal Inspection Service PO Box 2613 Jersey City NJ 07303-2613
08001-08004, 08007, 08009-08049, 08051-08086, 08088-08091, 08093-08099, 081-084, 08505, 08511, 08515, 08518, 08554, 08562, 08640-08641, 150-39776, 700-799	Postal Inspection Service 225 N Humphreys Blvd Memphis TN 38120-2149
400-693, 800-884, 850-999	Postal Inspection Service 222 S Riverside Plz Ste 1250 Chicago IL 60606-6100

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7.0 Trademarks and Copyrights of the USPS

7.1 Trademarks and Service Marks

7.1.1 Registered Marks

The following are among the registered USPS trademarks and service marks:

1-800-ASK-USPS

Planet Code

Business Reply Mail

Planet Code USPS and Design

Business Reply Mail	Planet Code for U.S. and Design
Package Pickup	P.O. Box
Certified Mail	Postal Explorer
Click-N-Ship	<i>PostalOne!</i>
Confirm	Priority Mail
Customized MarketMail	Priority Mail United States Postal Service Design
USPS Tracking/Delivery Confirmation	Registered Mail
DMM	Returns@Ease
The Eagle Logo	Signature Confirmation
Express Mail	Stamps By Mail
<i>FASTforward</i>	Stamps to Go
First-Class Mail	Standard Mail
IMM	U.S. Mail and Design
Intelligent Mail barcode	U.S. Postal Service
Media Mail	United States Post Office
NCOA ^{Link}	United States Postal Service
Official Election Mail and Design	United States Postal Service and Design (with the Eagle Logo)
The Old Eagle Design	USPS
Standard Post	usps.com
PC Postage	We Deliver
pcpostage.com	We Deliver For You
Pickup on Demand	ZIP+4
Planet	ZIP Code

7.1.2 Use of Registered Marks

USPS trademarks must be used in the form listed in 7.1.1. Proper use of USPS registered marks requires capitalizing the initial letters of the marks to distinguish them from terms not used as trademarks. Words and phrases that are registered trademarks may also use the registration symbol ®. Figures that are registered marks must always use the registration symbol. (An exception to this rule is the USPS emblem used on letterheads and business cards. All other uses of the emblem must include the ®.)

7.1.3 Proposed or Pending Registration

The USPS has additional trademarks not yet registered. The rules in 7.1.2 apply to these common law marks, except that such marks are not to be identified by the symbol ®. Instead, the superscript initials TM may be used to identify these marks.

7.2 Copyrights

7.2.1 Copyrighted Material

The USPS secures copyrights in its philatelic designs and certain publications. The designs of postage stamps, stamped envelopes, stamped cards, aerogrammes, souvenir cards, and other philatelic items issued on or after January 1, 1978, are copyrighted by the USPS under title 17 USC.

7.2.2 Permitted Use of Copyrighted Material

The use of illustrations of the designs covered by such copyrights is permitted:

- a. In editorial matter in newspapers, magazines, journals, books, philatelic catalogs, and philatelic albums.
- b. In advertising matter, circulars, or price lists for the sale of the postal items illustrated.
- c. In advertising matter, circulars, or price lists for the sale of newspapers

- c. in advertising matter, circulars, or price lists for the sale of newspapers, magazines, journals, books, philatelic catalogs, and philatelic albums containing illustrations of philatelic designs.
- d. In motion-picture films, microfilms, slides, or electronic tape for projection on a screen or for use in telecasting. No print or other reproduction from such films, slides, or tapes may be made except for the uses permitted in this section.

7.2.3 Design Reproductions of Copyrighted Material

Illustrations permitted by 7.2.2a. through 7.2.2d may be in color or in black and white, and may depict philatelic items as uncanceled or canceled. When depicting uncanceled items in color, illustrations must be less than 75% or more than 150% in linear dimension of the size of the design of the philatelic items as issued. Color illustrations of canceled philatelic items and black and white illustrations of uncanceled or canceled philatelic items may be in any size.

7.2.4 License Request for Copyrighted Material

The USPS may grant licenses for the use of illustrations of its copyright designs and registered trademarks outside the scope of the above permission. A request for such a license must be sent to the manager, Licensing, Public Affairs and Communications (see 8.1 for address).

7.3 Inquiries about USPS Trademarks and Copyrights

Inquiries about USPS copyrights or use of USPS trademarks and service marks, copyright materials, and intellectual property other than patents and technical data rights in USPS contracts must be sent to USPS Stamp Development. Inquiries about licenses to publish or reproduce ZIP Code information must be sent to the National Customer Support Center (see 8.1 for address).

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8.0 USPS Contact Information

8.1 Postal Service

Business Mail Acceptance
US Postal Service
475 L'Enfant Plz SW Rm 2P846
Washington DC 20260-0846

Business Mailer Support
US Postal Service
475 L'Enfant Plz SW Rm 2P846
Washington DC 20260-0846

Citizens Stamp Advisory Committee
Stamp Services
US Postal Service
1735 North Lynn Street, Room 5013
Arlington, VA 22209-6432

Consumer Advocate
US Postal Service
475 L'Enfant Plz SW
Washington DC 20260-2200

Corporate Accounting Manager
US Postal Service
475 L'Enfant Plz SW Rm 8831
Washington DC 20260-5241

Customer Service Standardization
US Postal Service
475 L'Enfant Plz SW Rm 6816

Washington DC 20260-6816

Domestic Claims
Accounting Services
US Postal Service
PO Box 80143
St Louis MO 63180-0143

Domestic Claims Appeals
Accounting Services
US Postal Service
PO Box 80141
St Louis MO 63180-0141

Domestic Products
US Postal Service
475 L'Enfant Plz SW Room 5337
Washington DC 20260-5337

Distribution Operations
Washington DC Post Office
900 Brentwood Rd NE
Washington DC 20066-9704

Engineering
US Postal Service
8403 Lee Hwy
Merrifield VA 22082-8101

General Counsel
US Postal Service
475 L'Enfant Plz SW
Washington DC 20260-1100

Integrated Business Solutions, Shipping Services
US Postal Service
475 L'Enfant Plz SW Rm 5149
Washington DC 20260-5149

Label Printing Center
US Postal Service
500 SW Gary Ormsby Dr
Topeka KS 66624-9502
(800) 332-0317

Licensing
Marketing
US Postal Service
475 L'Enfant Plz SW Rm 1P801
Washington DC 20260-0801

Material Distribution Center
US Postal Service
500 SW Gary Ormsby Dr
Topeka KS 66624-9502
(800) 332-0317

Money Order Branch
Accounting Service Center
US Postal Service
PO Box 82450
St Louis MO 63182-2450

National Customer Support Center
US Postal Service
225 N. Humphreys Blvd, Ste 501
Memphis, TN 38188-1001

Network Distribution Center Operations

US Postal Service
475 L'Enfant Plz SW Rm 7631
Washington DC 20260-2806

New Business Opportunities

US Postal Service
475 L'Enfant Plz SW Rm 5407
Washington DC 20260-5407

Payment Technology

US Postal Service
475 L'Enfant Plz SW Rm 3660
Washington DC 20260-4110

Postal Inspection Service

222 S Riverside Plz Ste 1250
Chicago IL 60606-6100

Postal Inspection Service

PO Box 2613
Jersey City NJ 07303-2613

Postal Inspection Service

225 N Humphreys Blvd
Memphis TN 38120-2149

Pricing

US Postal Service
475 L'Enfant Plz SW Rm 4016
Washington DC 20260-4016
(see 8.4.1 for Pricing and Classification Service Center (PCSC) address)

Pricing Strategy

US Postal Service
475 L'Enfant Plz SW Rm 4316
Washington DC 20260-4316

Product Classification (formerly Mailing Standards)

US Postal Service
475 L'Enfant Plz SW Rm 4446
Washington DC 20260-5015

Product Development

US Postal Service
475 L'Enfant Plz SW Rm 5012
Washington DC 20260-5012

Prohibitory Order Processing Center

PO Box 1500
New York NY 10008-1500

Recorder

Judicial Officer
US Postal Service

2101 Wilson Blvd Ste 600
Arlington VA 22201-3078

Revenue Assessment and Control

US Postal Service
475 L'Enfant Plaza SW Rm 8430
Washington DC 20260-8430

Senior Counsel

Ethics and Information
US Postal Service
475 L'Enfant Plz SW
Washington DC 20260-1127

Shipping Support, Shipping Services
US Postal Service
475 L'Enfant Plz SW NB Ste 5437
Washington DC 20260-0001

Stamp Services
US Postal Service
475 L'Enfant Plz SW Rm 3300
Washington DC 20260-3501

Stamp Fulfillment Services
US Postal Service
8300 NE Underground Dr. Pillar 210
Kansas City MO 64144-0011

Transactions and Correspondence
US Postal Service
475 L'Enfant Plz SW Rm 5621
Washington DC 20260-0230

8.2 Federal Agencies

Bureau of Alcohol Tobacco and Firearms
US Department of the Treasury
1200 Pennsylvania Ave NW
Washington DC 20226-0001

Bureau of the Public Debt
US Department of the Treasury
PO Box 1328
Parkersburg WV 26106-1328

Diplomatic Pouch Division
US Department of State
1375 K St NW
Washington DC 20522-0508

Office of the Federal Register
National Archives and Records Administration
1100 L St NW Rm 8401
Washington DC 20005-0001

Plant Protection and Quarantine Programs
Animal and Plant Health Inspection Service
US Department of Agriculture
4700 River Rd
Riverdale MD 20737-1228

Postal Regulatory Commission

901 New York Ave NW Ste 200
Washington DC 20268-0001

Superintendent of Documents
US Government Printing Office
732 N Capitol St NW
Washington DC 20401-0003

US Fish and Wildlife Service
US Department of the Interior
18TH and C St NW
Washington DC 20240-0001

8.3 Other Agencies

American National Standards Institute
11 W 42ND St
New York NY 10036-8002
(212) 642-4000

Automatic Identification Manufacturers (AIM)
634 Alpha Dr
Pittsburgh PA 15238-2802
(412) 963-8588
www.aimusa.org

Uniform Code Council INC
7887 Washington Village Dr Ste 300
Dayton OH 45459
(937) 435-3870
www.uc-council.org

8.4 PCSC and District Business Mail Entry Offices Contact Information

The Pricing and Classification Service Center (PCSC) and the district business mail entry offices provide guidance on mail classification, prices, and mail preparation standards. Direct questions about mail classification and special mail services to local postal officials. The PCSC can help local offices answer these questions. (Note: Zip Code Prefix 340 is shared by South Florida and New York districts. Unassigned prefixes are not listed.)

8.4.1 Pricing and Classification Service Center (PCSC)

For return receipts mailed under the provisions in [601.11.5](#), [601.11.7](#), and [601.11.8](#), use the following address:

90 Church St Ste 3100
New York NY 10007-2951
Telephone: (212) 330-5300 / Fax: (212) 330-5320

PCSC, PACT MAILING OFFICE
USPS ELIGIBILITY NO. XX-00-0000
90 Church Street Suite 3100
New York, NY 10007-2951

Exhibit 8.4.1 Contact Information for Business Mail Entry Offices, Grouped by Region and Listed by District and 3-Digit ZIP Code Service Area

MANAGER BUSINESS MAIL ENTRY	3- DIGIT ZIP CODE SERVICE AREA
Capitol Metro Area	
Atlanta District: 1605 Boggs Road North Metro, GA 30026-9651 Phone: 770-717-3435 Fax: 770-717-3405	300-303, 305, 306, 311, 399
Baltimore District: 900 E. Fayette Street, Room 166 Baltimore, MD 21233-9706 Phone: 410-347-4248 Fax: 410-234-8553	210-212, 214-219
Capital District: 900 Brentwood Road, NW Washington, DC 20066-7204 Phone: 202-636-2177 Fax: 202-636-4367	200, 202-209
Greater South Carolina District: 2001 Dixiana Road West Columbia, SC 29172-3098 Phone: 803-926-6329	290-296

PHONE: 803-926-6326

Fax: 803-926-6326

Greensboro District: 270-279, 286

418 Gallimore Dairy Road
Greensboro, NC 27409-
9651

Phone: 336-668-1250

Fax: 336-668-1266

Mid-Carolinas District: 280-285, 287-289, 297

1820 W. Pointe Drive, Suite
A

Charlotte, NC 28214-9106

Phone: 704-398-5521

Fax: 704-398-5555

Northern Virginia District: 201, 220-223, 226-227

8409 Lee Highway
Merrifield, VA 22081-9651

Phone: 703-698-6380

Fax: 703-207-3660

Richmond District: 224-225, 228-239, 244

1801 Brook Road
Richmond, VA 23232-9650

Phone: 804-775-6235

Fax: 804-698-4711

Eastern Area

Appalachian District: 240-243, 245-259, 261-268

1002 Lee Street
Charleston, WV 25301-
1700

Phone: 304-561-1060

Fax: 304-561-1033

Central Pennsylvania District: 169-188, 195-196

1425 Crooked Hill Road,
3rd Floor
Harrisburg, PA 17107-
9651

Phone: 717-257-4819

Fax: 717-257-2152

Cincinnati District: 410, 430-433, 437-438, 450-457, 459, 470

990 Dalton Avenue
Cincinnati, OH 45203-
9651

Phone: 513-684-5588

Fax: 513-684-5691

Kentuckiana District: 400-409, 411-418, 420-427, 471, 476-477

4440 Crittenden Drive
Louisville, KY 40221-9998

Phone: 502-375-8540

Fax: 502-375-8549

Northern Ohio District: 434-436, 439-449, 458

2400 Orange Avenue,
Room 24
Cleveland, OH 44101-
9603

Phone: 216-443-4100

Fax: 216-443-4186

Philadelphia Metro District: 189-194

3190 S. 70th Street, Room
502

Philadelphia, PA 19153-
9651

Phone: 215-863-5061

Fax: 215-863-6074

South Jersey District: 077, 080-087, 197-199
501 Benigno Boulevard
Bellmawr, NJ 08031-9651
Phone: 856-933-4262
Fax: 856-933-4241

Tennessee District: 307, 370-385
525 Royal Parkway
Nashville, TN 37229-9651
Phone: 615-885-9103
Fax: 615-885-9287

Western New York District: 140-149
55 Msgr. Valente Drive
Buffalo NY 14206-9651
Phone: 716 846 2562
Fax: 716 846 2586

Western Pennsylvania District: 150-168, 260
1001 California Avenue,
Room 2027
Pittsburgh, PA 15290-9651
Phone: 412-359-1468
Fax: 412 359-7108

Great Lakes Area

Central Illinois District: 601, 603-605, 609, 613-617
6801 W. 73rd Street
Bedford Park, IL 60499-9651
Phone: 708-563-7772
Fax: 708-563-7703

Chicago District: 606-608
433 W. Harrison
Chicago, IL 60607-9651
Phone: 312-983-8627
Fax: 312-983-8433

Detroit District: 480-485, 492
1401 W Fort Street, Room
M-156
Detroit, MI 48233-9651
Phone: 313-226-8678
Fax: 313-226-8124

Gateway District: 618-620, 622-631 633-635, 650-653
1720 Market Street, Room
1013
St. Louis, MO 63155-9651
Phone: 314-436-4103
Fax: 314-436-4565

Greater Indiana District: 460-469, 472-475, 478-479
3939 Vincennes Road
Indianapolis, IN 46298-9651
Phone: 317-870-8504
Fax: 317-870-8684

Greater Michigan District: 486-491, 493-499
4800 Collins Road
Lansing, MI 48924-9655
Phone: 517-337-8705
Fax: 517-337-8734

Lakeland District: 530-532, 534-535, 537-539, 541-545, 549,
350 W. St. Paul Avenue 600, 602, 610-611
Milwaukee, WI 53203-9651
Phone: 414-287-1971
Fax: 414-287-2515

Northeast Area

Northeast Area

Albany District: 30 Old Karner Road Albany, NY 12288-9601 Phone: 518-452-4034 Fax: 518-464-7451	120-123, 128-139
Caribbean District: 585 Ave FD Roosevelt, Suite 125 San Juan, PR 00936-9651 Phone: 787-622-1795 Fax: 787-622-1788	006-009
Connecticut Valley District: 141 Weston Street Hartford CT 06101-9451 Phone: 860-524-6311 Fax: 860-524-6482	010-013, 027-029, 060-069
Greater Boston District: 25 Dorchester Avenue, Room 1004 Boston, MA 02205-9651 Phone: 617-654-5443 Fax: 617-654-5026	014-026, 055
Long Island District: 160 Duryea Road Melville, NY 11747-8040 Phone: 631-755-2939 Fax: 631-755-2940	005, 115, 117-119
New York District: 421 8th Avenue, Room 3212 New York, NY 10199-9651 Phone: 212-330-4225 Fax: 212-330-3801	090-099, 100-102, 104
Northern New England District: 151 Forest Avenue, Suite 7023 Portland ME 04101-7023 Phone: 207-482-7186 Fax: 207-482-7265	030-054, 056-059
Northern New Jersey District: 494 Broad Street, Room 223 Newark, NJ 07102-9334 Phone: 973-468-7075 Fax: 973-468-7027	070-076, 078-079, 088-089
Triboro District: 1050 Forbell Street Brooklyn, NY 11256-9602 Phone: 718-348-3760 Fax: 718-348-3753	103, 110-114, 116
Westchester District: 1000 Westchester Avenue White Plains, NY 10610- 9651 Phone: 914-697-7013 Fax: 914-697-7022	105-109, 124-127

Pacific Area

Bay Valley District: 1750 Lundy Avenue San Jose, CA 95101-7024 Phone: 408-437-6811	939, 945-948, 950-951
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Fax: 408-437-6832

Honolulu District: 967-969
3600 Aolele Street
Honolulu, HI 96820-9651
Phone: 808-423-3928
Fax: 808-423-3759

Los Angeles District: 900-904, 962-966
7001 S. Central Avenue
Los Angeles, CA 90052-9614
Phone: 323-586-4481
Fax: 323-586-3702

Sacramento District: 936-938, 942, 952-953, 956-960
3775 Industrial Boulevard
W. Sacramento, CA 95799-0070
Phone: 916-373-8723
Fax: 651-675-1556

San Diego District 919-925
11251 Rancho Carmel
Drive
San Diego, CA 92199-

9651
Phone: 858-674-0417
Fax: 858-573-0566

San Francisco District 940-941, 943-944, 949, 954-955
1300 Evans Avenue
San Francisco, CA 94124-1769
Phone: 415-550-5716
Fax: 415-550-5770

Santa Ana District 905-908, 917-918, 926-928
3101 W. Sunflower Avenue
Santa Ana, CA 92799-9324
Phone: 714-662-6447
Fax: 714-966-2004

Sierra Coastal District 910-916, 930-935
28201 Franklin Parkway
Santa Clarita, CA 91383-9650
Phone: 661-775-6663
Fax: 661-775-7114

Southwest Area

Alabama District 350-352, 354-368
351 24th Street N.
Birmingham, AL 35203-9651
Phone: 205-521-0217
Fax: 205-254-0176

Arkansas District: 716-729
420 Natural Resources
Drive
Little Rock, AR 72205-9651
Phone: 501-228-4121
Fax: 501-228-4299

Dallas District: 750-759
951 W. Bethel Road
Coppell, TX 75099-9996
Phone: 972-462-2208
Fax: 972-462-2219

Fort Worth District: 739, 760-764, 768-769, 790-796
4600 Mark IV Parkwav

Fort Worth, TX 76161-9621
Phone: 817-317-3635
Fax: 817-317-2777

Houston District: 770-778
401 Franklin Street, Room
115
Houston, TX 77201-9653
Phone: 713-226-3201
Fax: 713-226-3041

Louisiana District: 700-701, 703-708, 710-714
701 Loyola Avenue, Room
1101
New Orleans, LA 70113-
9651
Phone: 504-589-1104
Fax: 651 406-4177

Mississippi District: 369, 386-397
401 E. South Street
Jackson, MS 39201-9998
Phone: 601-351-7125
Fax: 601-351-7501

North Florida District: 298-299, 304, 308-310, 312-320, 326, 344,
398
3650 Southside Boulevard
Jacksonville, FL 32216-
9651
Phone: 904-645-3220
Fax: 904-641-7925

Oklahoma District: 730, 731, 734-738, 740, 741, 743-749
4025 W Reno Avenue,
Room 2044
Oklahoma City, OK 73125-
9996
Phone: 405-815-2320
Fax: 405-815-2013

Rio Grande District: 733, 765-767, 779-789, 797-799, 885
10410 Perrin Beitel, Room
1069
San Antonio, TX 78284-
9651
Phone: 210-368-8316
Fax: 210-368-8463

South Florida District: 330-334, 340, 349
16000 Pines Boulevard
Pembroke Pines, FL
33027-9990
Phone: 954-450-3016
Fax: 954-436-4350

Suncoast District: 321, 327-329, 335-339, 341-342, 346-347
5433 W. Sligh Avenue,
Suite C
Tampa, FL 33634-9654
Phone: 813-243-5960
Fax: 813-243-7453

Western Area

Alaska District: 995-999
4141 Postmark Drive
Anchorage, AK 99530-
9651
Phone: 907-266-3277
Fax: 907-266-3178

Arizona District: 850-853, 855-857, 859-860, 863-865, 870-
884
4949 E. Van Buren Street,
Room 190
Phoenix, AZ 85026-9651

Phone: 602-225-3148
 Fax: 602-225-3909

Central Plains District: 515-516, 664-666, 668-681, 683-693
 PO Box 199513
 Omaha, NE 68119-9513
 Phone: 402-573-2117
 Fax: 402-573-2131

Colorado/Wyoming District: 800-816, 820-831
 7500 E. 53rd Place, Room 2213
 Denver, CO 80266-9651
 Phone: 303-853-6134
 Fax: 303-853-6194

Dakotas District: 565, 567, 570-577, 580-588, 590-599
 2801 S. Kiwanis Avenue
 Sioux Falls, SD 57105-9651
 Phone: 605-333-2650
 Fax: 605-333-2777

Hawkeye District District: 500-514, 520-528, 612
 7900 Hickman Road
 Des Moines, IA 50318-9651
 Phone: 515-251-2359
 Fax: 515-251-2052

Mid-America District: 636-641, 644-649, 654-658, 660-662, 667
 300 W. Pershing, Street 100
 Kansas City, MO 64108-9995
 Phone: 816-374-9358
 Fax: 816-374-9701

Nevada-Sierra District: 889-891, 893-895, 897-898, 961
 1001 E. Sunset Road
 Las Vegas, NV 89199-9651
 Phone: 702-361-9281
 Fax: 702-361-9406

Northland District: 540, 546-548, 550-551, 553-564, 566
 100 S. 1st Street, Room 115
 Minneapolis, MN 55401-9651
 Phone: 612-349-6395
 Fax: 612-349-3576

Portland District: 970-979, 986
 715 NW Hoyt Street
 Portland, OR 97208-9651
 Phone: 503-294-2456
 Fax: 503-294-2358

Salt Lake City District: 832-834, 836-837, 840-847, 832-834, 836, 837
 1760 W. 2100 S.
 Salt Lake City, UT 84199-9651
 Phone: 801-974-2507
 Fax: 801-974-2513

Seattle District: 835, 838, 980-985, 988-994
 415 First Avenue N, 2nd Floor
 Seattle, WA 98109-9432
 Phone: 206-378-2612
 Fax: 206-378-2546

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