

ITEM 8
PROPOSED DECISION AND AMENDMENT TO
PARAMETERS AND GUIDELINES

Education Code Sections 60850 and 60851
Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539)
California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209,
1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, Register 01, No. 25, effective
July 20, 2001 and Register 03, No. 18, effective May 1, 2003¹

High School Exit Examination (00-TC-06)

As Modified by:

Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

17-MR-01

Department of Finance, Requester

¹ The captions for the Test Claim Decision and Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 included Education Code sections 60853 and 60855 and Sections “1200-1225” of the Title 5 regulations, all of which implement the California High School Exit Examination. However, sections 60853 and 60855 were denied by the Commission as not imposing any state-mandated duties on school districts and thus should not have been included in the caption for the Parameters and Guidelines. (Test Claim Statement of Decision, pages 12, 15, 32.) In addition, the Parameters and Guidelines identify only the following regulations as imposing reimbursable state-mandated activities: California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220. (Test Claim Statement of Decision, pages 43-47, 48; Exhibit C, Parameters and Guidelines, pages 3-7.) The Parameters and Guidelines, however, mistakenly omit a citation to section 1225 of the Title 5 regulations. As determined in the Test Claim Decision, section 1225 of the Title 5 regulations mandated the district superintendent to certify the accuracy of information regarding the number of exams for each test cycle to the California Department of Education (CDE) within a specified time. (Test Claim Statement of Decision, pages 36, 48.) The Commission approved the activity mandated by section 1225 as a reimbursable state-mandated activity, and CDE did not later amend or move that activity to another regulation. (Test Claim Statement of Decision, page 48.) Although that activity is correctly included in the Parameters and Guidelines, the activity is followed by an incorrect citation to section 1207. Therefore, the caption to this Mandate Redetermination includes all regulations mandating the activities approved by the Commission for reimbursement.

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July 26, 2019

Mr. Ed Hanson
Department of Finance
915 L Street, 7th Floor
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Second Hearing Draft Proposed Decision, Schedule for Comments, and Notice of Hearing

Second Hearing: New Test Claim Decision

High School Exit Examination (00-TC-06), 17-MR-01

Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25 effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003

Department of Finance, Requester

Dear Mr. Hanson:

On July 26, 2019, the Commission on State Mandates (Commission) adopted the Decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new Test Claim Decision to supersede the previously adopted Test Claim Decision. (Cal. Code Regs., tit. 2, § 1190.5(a).) The Draft Proposed Decision for the second hearing is enclosed for your review and comment. (Cal. Code Regs., tit. 2, § 1190.5(b).)

Written Comments on Second Hearing Draft Proposed Decision

Written comments may be filed on the Draft Proposed Decision by **August 16, 2019**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission on State Mandates (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. Refer to http://www.csm.ca.gov/dropbox_procedures.php

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Mr. Hanson
July 26, 2019
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on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

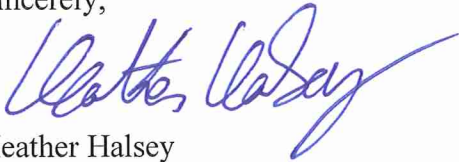
Hearing

The second hearing on the Request for Mandate Redetermination is set for **Friday, September 27, 2019**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision for the second hearing will be issued on or about September 13, 2019.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. Staff will no longer send reminder emails because the Commission does not have the resources to contact each party and interested party. Therefore, the last communication from Commission staff is the Proposed Decision which will be issued approximately two weeks prior to the hearing and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey
Executive Director

ITEM _____
MANDATE REDETERMINATION
SECOND HEARING: NEW TEST CLAIM DECISION
DRAFT PROPOSED DECISION

Education Code Sections 60850 and 60851
Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539)
California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209,
1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25 effective
July 20, 2001 and Register 03, No. 18, effective May 1, 2003¹

High School Exit Examination (00-TC-06)

As Alleged to be Modified by:

Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

17-MR-01

Department of Finance, Requester

¹ The captions for the Test Claim Decision and Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 included Education Code sections 60853 and 60855 and Sections “1200-1225” of the Title 5 regulations, all of which implement the California High School Exit Examination. However, sections 60853 and 60855 were denied by the Commission as not imposing any state-mandated duties on school districts and thus should not have been included in the caption for the Parameters and Guidelines. (Exhibit B, Test Claim Statement of Decision, pages 12, 15, 32.) In addition, the Parameters and Guidelines identify only the following regulations as imposing reimbursable state-mandated activities: California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220. (Exhibit B, Test Claim Statement of Decision, pages 43-47, 48; Exhibit C, Parameters and Guidelines, pages 3-7.) The Parameters and Guidelines, however, mistakenly omit a citation to section 1225 of the Title 5 regulations. As determined in the Test Claim Decision, section 1225 of the Title 5 regulations mandated the district superintendent to certify the accuracy of information regarding the number of exams for each test cycle to the California Department of Education (CDE) within a specified time. (Exhibit B, Test Claim Statement of Decision, pages 36, 48.) The Commission approved the activity mandated by section 1225 as a reimbursable state-mandated activity, and CDE did not later amend or move that activity to another regulation. (Exhibit B, Test Claim Statement of Decision, page 48.) Although that activity is correctly included in the Parameters and Guidelines, the activity is followed by an incorrect citation to section 1207. Therefore, the caption to this Mandate Redetermination includes all regulations mandating the activities approved by the Commission for reimbursement.

EXECUTIVE SUMMARY

Overview

On July 26, 2019, the Commission on State Mandates (Commission) adopted its Decision finding that the Department of Finance (Finance) made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *High School Exit Examination*, 00-TC-06 mandate may be modified based on a subsequent change in law, such that Finance has a substantial probability of prevailing at the second hearing and directed staff to set the second hearing in this matter to determine whether a new test claim decision should be adopted to supersede the prior test claim decision based on a subsequent change in law that modifies the state's liability.

Specifically, the Commission found that Statutes 2015, chapter 572, section 2 (SB 172) suspended administration of the high school exit examination (HSEE, or CAHSEE) for the 2015-2016, 2016-2017, and 2017-2018 school years, and also suspended the requirement that each pupil completing grade 12 successfully pass the high school exit examination in order to graduate from high school. The Commission also found that Statutes 2017, chapter 641, section 16 (AB 830), effective January 1, 2018, then expressly repealed the statutes that impose the mandate, and declares that "this bill would eliminate the high school exit examination and would remove it as a condition of receiving a diploma of graduation or a condition of graduation from high school."²

And, after the Request for Mandate Redetermination was filed, California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18, which were found to impose a reimbursable state mandate by the Commission in *High School Exit Examination*, 00-TC-06, were repealed, effective February 19, 2019, in accordance with the repeal of the test claim statutes.³

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law (that is, the suspension and repeal of the test claim statutes) and, if so, whether to adopt a new test claim decision to supersede the previously adopted test claim decision, reflecting the state's modified liability.⁴

Staff recommends that the Commission approve the request for a new test claim decision for *High School Exit Examination*, 00-TC-06, and finds that the program, beginning July 1, 2016, no longer constitutes a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution based on the suspension of the program by Statutes 2015, chapter 572, and the repeal of the program by Statutes 2017, chapter 641.

² Exhibit E, Decision, First Hearing.

³ California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.)

⁴ California Code of Regulations, title 2, section 1190.5(b)(1).

Procedural History

On July 26, 2019, at the first hearing on this Request for Mandate Redetermination, the Commission adopted its Decision finding that Finance made an adequate showing that the Request identified a subsequent change in law, as defined, that may modify the state's liability for this program such that Finance had a substantial possibility of prevailing at this second hearing, and directing staff to proceed to the second hearing.⁵

On July 26, 2019, Commission staff issued the Draft Proposed Decision for the second hearing and the Draft Expedited Amendment to Parameters and Guidelines.⁶

Commission Responsibilities

Government Code section 17570 provides a process whereby a previously determined mandate finding may be redetermined by the Commission, based on a subsequent change in law. The redetermination process requires two hearings. With regard to second hearing the Commission's regulations state:

If the Commission proceeds to the second hearing, it shall consider whether the state's liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.⁷

Therefore, the issue before the Commission at this second hearing is whether the state's liability has been modified based on a subsequent change in law, as defined in section 17570, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision, reflecting the state's modified liability.

Staff Analysis

Statutes 2015, Chapter 572 and Statutes 2017, Chapter 641, a Subsequent Change in Law, Has Modified the State's Liability for the High School Exit Examination Program.

On March 25, 2004, the Commission adopted the Test Claim Statement of Decision in *High School Exit Examination*, 00-TC-06, finding that Education Code sections 60850 and 60851, as added by Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539), and California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18, which implement the Education Code sections, impose a reimbursable state-mandated new program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514.⁸ The Commission found that the

⁵ Exhibit E, Decision, First Hearing.

⁶ Exhibit F, Draft Proposed Decision, Second Hearing; Exhibit G, Draft Expedited Amendment to Parameters and Guidelines.

⁷ California Code of Regulations, Title 2, section 1190.5(b)(1) (Register 2014, No. 21).

⁸ Exhibit B, Test Claim Statement of Decision.

test claim statutes and regulations imposed a reimbursable mandate on school districts to provide notice to parents of transfer students of the HSEE and its requirements, maintain documentation of the provision of that notice, determine whether English-learning pupils possessed sufficient English language skills to be assessed with the HSEE, administer the HSEE to all pupils in grade 10, maintain security during the HSEE to prevent cheating, and, provide HSEE data to the Superintendent of Public Instruction.⁹

Effective January 1, 2016, Statutes 2015, chapter 572 added sections 60851.5 and 60851.6 to the Education Code. Section 60851.5 suspended the administration of the HSEE, and the requirement that grade 12 pupils pass it in order to graduate, for the 2015-16, 2016-17, and 2017-18 school years. Section 60851.6 required the granting of “a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination.”

Effective January 1, 2018, Statutes 2017, chapter 641 repealed Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, commencing with section 60850 and including sections 60851, 60853, and 60855, all pertaining to the HSEE. And, after the Request for Mandate Redetermination was filed, the State Board of Education repealed California Code of Regulations, title 5, sections 1200-1225.¹⁰

Staff finds the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for *High School Exit Examination*, 00-TC-06, has been modified based on a subsequent change in law. Specifically, Statutes 2015, chapter 572, effective January 1, 2016, suspended administration of the high school exit exam (HSEE, or CAHSEE) and the requirement that each pupil completing grade 12 successfully pass the HSEE in order to receive a diploma of graduation or to graduate from high school for the 2015-2016, 2016-2017, and 2017-2018 school years. Statutes 2017, chapter 641, effective January 1, 2018, then expressly repealed the statutes that impose the mandate. The approved activities in *High School Exit Examination*, 00-TC-06 were imposed entirely and only by these statutes and the regulations adopted to implement them. Although the implementing regulations were not amended when the program was suspended and had not yet been repealed when the request for mandate redetermination was filed, it is established law that “. . . no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”¹¹ Thus, the regulations must be interpreted consistent with the statutes from which their authority and reference is derived. The regulations were repealed effective February 19, 2019.¹²

⁹ Exhibit C, Parameters and Guidelines.

¹⁰ California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.)

¹¹ Government Code, section 11342.2.

¹² Register 2019, No. 8.

Finance urges the Commission to end the state’s liability for this program on January 1, 2016.¹³ However, Government Code section 17570(f) expressly states that “[a] request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for . . . loss of reimbursement for that fiscal year.”¹⁴ This Request for Mandate Redetermination was filed June 28, 2018, establishing a loss of reimbursement beginning July 1, 2016.¹⁵

Accordingly, staff finds that the activities determined to impose a reimbursable mandate in *High School Exit Examination*, 00-TC-06, as set forth in Education Code sections 60850 and 60851, and California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, are no longer mandated by the state pursuant to Statutes 2015, chapter 572 (SB 172) and Statutes 2017, chapter 641 (AB 830) and no longer constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning July 1, 2016.

Staff Recommendation

Staff recommends that the Commission adopt the Proposed Decision as its new Test Claim Decision, ending reimbursement for the mandated program beginning July 1, 2016.

Staff further recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed new Test Claim Decision following the hearing.

¹³ Exhibit A, Request for Mandate Redetermination, page 6.

¹⁴ See also, section 1190.1(f) of the Commission’s regulations.

¹⁵ Exhibit A, Request for Mandate Redetermination.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
SECOND HEARING: NEW TEST CLAIM
DECISION:

Education Code Sections 60850, 60851,
Statutes 1999x, Chapter 1 (SB 2) and
Statutes 1999, Chapter 135 (AB 2539)

California Code of Regulations, Title 5, Sections
1200, 1203, 1205, 1206, 1207, 1208, 1209,
1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and
1225, Register 01, No. 25, effective
July 20, 2001 and Register 03, No. 18, effective
May 1, 2003¹⁶

As Alleged to be Modified by: Statutes 2015,
Chapter 572 (SB 172) and Statutes 2017,
Chapter 641 (AB 830)

Filed on June 28, 2018

By the Department of Finance, Requester

Case No.: 17-MR-01

High School Exit Examination (00-TC-06)

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

(Adopted September 27, 2019)

¹⁶ The captions for the Test Claim Decision and Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 included Education Code sections 60853 and 60855 and Sections “1200-1225” of the Title 5 regulations, all of which implement the California High School Exit Examination. However, sections 60853 and 60855 were denied by the Commission as not imposing any state-mandated duties on school districts and thus should not have been included in the caption for the Parameters and Guidelines. (Exhibit B, Test Claim Statement of Decision, pages 12, 15, 32.) In addition, the Parameters and Guidelines identify only the following regulations as imposing reimbursable state-mandated activities: California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220. (Exhibit B, Test Claim Statement of Decision, pages 43-47, 48; Exhibit C, Parameters and Guidelines, pages 3-7.) The Parameters and Guidelines, however, mistakenly omit a citation to section 1225 of the Title 5 regulations. As determined in the Test Claim Decision, section 1225 of the Title 5 regulations mandated the district superintendent to certify the accuracy of information regarding the number of exams for each test cycle to CDE within a specified time. (Exhibit B, Test Claim Statement of Decision, pages 36, 48.) The Commission approved the activity mandated by section 1225 as a reimbursable state-mandated activity, and the California Department of Education (CDE) did not later amend or move that activity to another regulation. (Exhibit B, Test Claim Statement of Decision, page 48.) Although that activity is correctly included in the Parameters and Guidelines, the activity is followed by an incorrect citation to section 1207. Therefore, the caption to this Mandate Redetermination includes all regulations mandating the activities approved by the Commission for reimbursement.

DECISION

The Commission on State Mandates (Commission) heard and decided this Mandate Redetermination during a regularly scheduled hearing on September 27, 2019. [Witness list will be included in the adopted Decision.]

Government Code section 17570 and section 1190.1 et seq. of the Commission’s regulations establish the mandate redetermination process. In addition, the laws applicable to the Commission’s determination of a reimbursable state-mandated program are article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181.1 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision as its new Test Claim Decision to supersede the previously adopted Test Claim Decision by a vote of [vote will be included in the adopted Decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Yvette Stowers, Representative of the State Controller, Vice Chairperson	

Summary of the Findings

The Commission finds the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for *High School Exit Examination*, 00-TC-06, has been modified based on a subsequent change in law. Specifically, Statutes 2015, chapter 572, effective January 1, 2016, suspended administration of the high school exit exam (HSEE, or CAHSEE) for the 2015-2016, 2016-2017, and 2017-2018 school years, and also suspended the requirement that each pupil completing grade 12 in said years successfully pass the HSEE in order to receive a diploma of graduation or to graduate from high school. Statutes 2017, chapter 641, effective January 1, 2018, then expressly repealed the statutes that impose the mandate. Although the implementing regulations were not repealed at the time the Request for Mandate Redetermination was filed and so were not pled, it is established law that “. . . no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”¹⁷ Thus, the regulations must be interpreted consistent with the statutes from which their authority and reference is derived. Therefore, the implementing regulations lack the force of law effective January 1, 2018. Additionally, after the

¹⁷ Government Code, section 11342.2.

Request for Mandate Redetermination was filed, California Code of Regulations, title 5, sections 1200-1225, which encompasses the test claim regulations, 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18, were repealed effective February 19, 2019, in accordance with the repeal of the test claim statutes.¹⁸

Pursuant to Government Code section 17570, the Commission approves the request for a new test claim decision to supersede the previously adopted Decision based on a subsequent change in law and concludes that *High School Exit Examination*, 00-TC-06, does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning July 1, 2016.

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|---|
| 06/28/2018 | The Department of Finance (Finance) filed the Request for Mandate Redetermination. ¹⁹ |
| 08/31/2018 | The State Controller's Office (Controller) filed comments on the Request for Mandate Redetermination. ²⁰ |
| 07/26/2019 | The Commission adopted the Decision, First Hearing and directed Commission staff to notice the second hearing. ²¹ |
| 07/26/2019 | Commission staff issued the Draft Proposed Decision, Second Hearing and the Draft Expedited Amendment to Parameters and Guidelines. ²² |

II. Background

On March 25, 2004, the Commission adopted the Test Claim Statement of Decision in *High School Exit Examination*, 00-TC-06.²³ On April 26, 2006, the Commission adopted the Parameters and Guidelines for the following reimbursable activities imposed by Education Code sections 60850 and 60851, Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539), and Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18.

¹⁸ California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.)

¹⁹ Exhibit A, Request for Mandate Redetermination.

²⁰ Exhibit D, Controller's Comments on the Request for Mandate Redetermination.

²¹ Exhibit E, Decision, First Hearing.

²² Exhibit F, Draft Proposed Decision, Second Hearing; Exhibit G, Draft Expedited Amendment to Parameters and Guidelines.

²³ Exhibit B, Test Claim Statement of Decision.

- A. **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, 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)). Reimbursement is provided for notices delivered by the student or by U.S. Mail.
- B. **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.) Documentation may include a written copy of the notice or a record of mailing the notice.
- C. **Determining English language skills:** Determining whether English-learning pupils²⁴ possess sufficient English language skills at the time of the HSEE to be assessed²⁵ with the HSEE (Cal. Code Regs., tit. 5, § 1217.)
- D. **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)).

A teacher's time administering the HSEE during the school day is not reimbursable for any of the following activities. Administration is limited to the following activities specified in the regulations:

1. Training a test examiner either by a test site or district coordinator as provided in the test publisher's manual (Cal. Code Regs., tit. 5, §§ 1200, subd. (g) and 1210, subd. (c)(3)).
2. 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 Individual Education Program (IEP) (§ 1215, subd. (a)(1)).
3. Accurately identifying eligible pupils who take the HSEE by school personnel at the test site through the use of photo-identification, positive recognition by the test examiner, or some equivalent means of identification. (Cal. Code Regs., tit. 5, § 1203.)
4. 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. (Cal. Code Regs., tit. 5, § 1205.)

²⁴ As defined in Education Code section 435, subdivision (a).

²⁵ Criteria are identified in Education Code section 313.

5. 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. (Cal. Code Regs., tit. 5, § 1206.)
6. 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. (Cal. Code Regs., tit. 5, § 1209.)
7. 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. (Cal. Code Regs., tit. 5, § 1209.)
8. 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. (Cal. Code Regs., tit. 5, § 1210.)
9. The HSEE district coordinator's duties listed in section 1209 and referenced below.

District Coordinator 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 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, (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 required, and returned all test materials,

answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

10. The HSEE test site coordinator's duties listed in section 1210 and referenced below. This individual is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE.

Test site coordinator's duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test examiner(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 examiners 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 examiner(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 1205, 1206 and 1207 of the title 5 regulations; (12) within three (3) 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. 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 examiner.

11. Delivery of HSEE booklets to the school test site no more than two working days before the test is to be administered. (Cal. Code Regs., tit. 5, § 1212.) **This activity was repealed on May 19, 2004, therefore this activity is not reimbursable after May 18, 2004.**

E. Test security/cheating: Doing the following to maintain security:

1. 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 (§ 1210, subd. (c)(7)(B)).
2. Limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (a)).

3. Having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (b) of section 1211.5 of the title 5 regulations. (Cal. Code Regs., tit. 5, § 1210, subd. (c)(5).)
4. 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. (Cal. Code Regs., tit. 5, § 1210 (c)(5), § 1211, subd. (a), § 1211.5 (b)(4).)
5. 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 (Cal. Code Regs., tit. 5, § 1210, subd. (c)(7)(A)).
6. For persons with access to the HSEE (including test site coordinators and [sic] testexaminers) to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit set forth in subdivision (g). (Cal. Code Regs., tit. 5, § 1211.5, subd. (c).)
7. HSEE district and test site coordinators control of inventory and use of appropriate inventory control forms to monitor and track test inventory. (Cal. Code Regs., tit. 5, § 1211 subd. (b).)
8. 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. (Cal. Code Regs., tit. 5, § 1211, subd. (c).)
9. Providing secure transportation within the district for test materials once they have been delivered to the district. (Cal. Code Regs., tit. 5, § 1211, subd. (d).)
10. Not scoring the test 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. (Cal. Code Regs., tit. 5, § 1220.)

F. Reporting data to the SPI: Providing HSEE data to the SPI or independent evaluators or the publisher is reimbursable. 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 (§ 1207).

The regulation (§1207) was amended in May 2004 and August 2005 to add the following data that must be submitted to the state (which are not reimbursable under these parameters and guidelines): (1) pupil’s full name; (2) date of English proficiency reclassification; (3) if R-FEP pupil scored proficient or above on the California English-Language Arts Standards Test three (3) times since reclassification; (4) use of modifications during the exam [accommodations are reimbursed]; (5) participation in California Alternate Performance Assessment (CAPA); (6) school and district CBEDS enrollment; (7) district and county of residence for students with disabilities; (8) California School Information Services (CSIS) Student Number, once assigned.²⁶

The Alleged Subsequent Change in Law

Effective January 1, 2016, Statutes 2015, chapter 572 added sections 60851.5 and 60851.6 to the Education Code. Section 60851.5 provides that “Notwithstanding Section 60851, the administration of the high school exit examination, and the requirement that each pupil completing grade 12 successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school, shall be suspended for the 2015-16, 2016-17, and 2017-18 school years.” Section 60851.6 provides that “Notwithstanding Section 60851 or any other law, the governing board or body of a local educational agency, and the department on behalf of state special schools, shall grant a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination.”

Effective January 1, 2018, Statutes 2017, chapter 641 repealed Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, commencing with section 60850, all pertaining to the HSEE.

California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18, which were found to impose a reimbursable state mandate by the Commission in *High School Exit Examination*, 00-TC-06, were repealed effective February 19, 2019, in accordance with the repeal of the test claim statutes.²⁷

The Assembly Floor Analysis for AB 830 explains the history of Statutes 2015, chapter 572 and Statutes 2017, chapter 641 as follows:

New standards. The CAHSEE was aligned to the content standards for English language arts and mathematics that were adopted pursuant to the 1999 education reform package of bills. In 2010 the SBE voted to adopt the Common Core State Standards (CCSS). The adoption of the CCSS led to the development of new

²⁶ Exhibit C, Parameters and Guidelines.

²⁷ California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.).

statewide assessments that are aligned to the new standards. However, the CAHSEE is still aligned to the old standards.

Because the CAHSEE is not aligned to the CCSS, which have been adopted by California, the Legislature enacted SB 172 (Liu), Chapter 572, Statutes of 2015, which suspended CAHSEE for the 2015-16, 2016-17, and 2017-18 fiscal years and, until July 31, 2018, requires LEAs to grant a high school diploma to any pupil who has met all other requirements for high school graduation since 2003-04.

Task force recommendations. SB 172 also required the SPI to convene a task force to make recommendations regarding the continuation of a high school exit exam or other means of meeting high school graduation requirements. The task force appointed by the SPI consisted of 29 members who represented teachers, school administrators, school board members, parents, students, the business community, testing experts, and the Legislature. The SPI's report and recommendations were released September 2016. The recommendation of the SPI is to remove the requirement to pass the CAHSEE as a condition of high school graduation. This bill implements that recommendation.²⁸

On July 26, 2019, at the first hearing, the Commission heard and adopted its Decision finding that the requester identified a subsequent change in law, as defined, and made an adequate showing that the request, considered in light of all evidence in the record, had a substantial possibility of prevailing at this second hearing.²⁹

III. Positions of the Parties, Interested Parties, and Interested Persons

A. Department of Finance, Requester

Finance asserts that Statutes 2015, chapter 572, effective January 1, 2016, “suspended the administration of the [HSEE] and the requirement that students must pass the [HSEE] to graduate high school for school years 2015-16 through 2017-18, and retroactively granted high school diplomas to grade 12 students who successfully fulfilled graduation requirements but did not graduate as a result of not passing the [HSEE].”³⁰ Finance also asserts that Statutes 2017, chapter 641, effective January 1, 2018, “repealed the authorizing statutes for the [HSEE], effectively terminating the administration of the [HSEE].”³¹

Accordingly, Finance states that “[g]iven the suspension and repeal of the authorizing statute, any required activities pursuant to the California Code of Regulations related to the [HSEE] are unsupported by statute and should no longer be a basis for mandated activities.”³² Finance

²⁸ Exhibit X, Assembly Floor Analysis, Concurrence in Senate Amendments (Sept. 13, 2017), Assembly Bill 830 (2017-2018 Reg. Sess.), page 2.

²⁹ Exhibit E, Decision, First Hearing.

³⁰ Exhibit A, Request for Mandate Redetermination, page 5.

³¹ Exhibit A, Request for Mandate Redetermination, page 5.

³² Exhibit A, Request for Mandate Redetermination, page 5.

concludes that “the reimbursable activities identified in the High School Exit Examination Statement of Decision (00-TC-06) cease to be eligible for reimbursements effective January 1, 2016. Therefore, based on the change in law, the state’s liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero.”³³

B. State Controller’s Office

The Controller concurs with Finance’s request to adopt a new test claim decision “to supersede the prior decision on the High School Exit Examination mandate program based upon the suspension and repeal of the authorizing statute.”³⁴

C. School Districts

No comments have been filed by any of the eligible claimant school districts or any of the school district associations that represent them.

IV. Discussion

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the state’s liability. Government Code section 17570 provides for a two hearing process. At the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6(a) of the California Constitution.”³⁵

California Code of Regulations, title 2, section 1190.5(b)(1) provides that “[i]f the Commission proceeds to the second hearing, it shall consider whether the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution has been modified based on the subsequent change in law alleged by the requester, thus requiring adoption of a new test claim decision to supersede the previously adopted test claim decision.”³⁶

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

³³ Exhibit A, Request for Mandate Redetermination, page 6.

³⁴ Exhibit D, Controller’s Comments on the Request for Mandate Redetermination.

³⁵ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

³⁶ Register 2014, No. 21.

articles XIII A and XIII B impose.”³⁷ Thus, the subvention requirement of section 6 is “directed to state-mandated increases in the services provided by [local government] ...”³⁸

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

1. A state statute or executive order requires or “mandates” local agencies or school districts to perform an activity.³⁹
2. The mandated activity constitutes a “program” that 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.⁴⁰
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.⁴¹
4. The mandated activity results in the local agency or school district incurring increased costs, within the meaning of section 17514. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity.⁴²

The Commission is vested with the exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6 of the California Constitution.⁴³ The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.⁴⁴ In making its decisions, the Commission must strictly construe article XIII B, section 6 of the California Constitution, and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”⁴⁵

³⁷ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

³⁸ *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

³⁹ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

⁴⁰ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles* (1987) 43 Cal.3d 46, 56).

⁴¹ *San Diego Unified School Dist.* (2004) 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal3d 830, 835.

⁴² *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.

⁴³ *Kinlaw v. State of California* (1991) 53 Cal.3d 482, 487.

⁴⁴ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109.

⁴⁵ *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1280 [citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817].

Therefore, the issue before the Commission at this second hearing is whether the state’s liability has been modified based on a subsequent change in law and, if so, whether to adopt a new test claim decision to supersede the previously adopted test claim decision, reflecting the state’s modified liability. If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission is required to adopt new parameters and guidelines or amend existing parameters and guidelines.⁴⁶

A. Statutes 2015, Chapter 572, and Statutes 2017, Chapter 641, a Subsequent Change in Law Within the Meaning of Government Code Section 17570, Has Modified the State’s Liability for *High School Exit Examination*, 00-TC-06, Resulting in No Costs Mandated by the State Beginning July 1, 2016.

In *High School Exit Examination*, 00-TC-06, the Commission approved Education Code sections 60850 and 60851, which mandated school districts to provide notice to students about the HSEE and required them to administer the test on dates designated by the Superintendent of Public Instruction. The Commission also found reimbursable state-mandated activities imposed by California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225.⁴⁷ All these regulatory sections are located in Subchapter 6 of Chapter 2 of Division 1 of Title 5 of the California Code of Regulations, with Subchapter 6 pertaining solely to the HSEE, and identify as their authority and reference Education Code sections 60850 and 60851.⁴⁸

As discussed in the Decision, First Hearing, Statutes 2015, chapter 572, effective January 1, 2016, added section 60851.5 to the Education Code, suspending the administration of the HSEE. Statutes 2017, chapter 641 effective January 1, 2018, then repealed all the sections in the Education Code regarding the creation and administration of the HSEE. Accordingly, the Commission found that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, constitute a subsequent change in law that may modify the state’s liability.⁴⁹

The Commission finds that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, which suspended and repealed the test claim statutes in *High School Exit Examination*, 00-TC-06 and which constitute a subsequent change in law, have modified the state’s liability for the program within the meaning of Government Code section 17570. Article XIII B, section 6 of the California Constitution requires that “[w]henver 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 the local government for the costs of the program or increased level of service” Reimbursement under article XIII B, section 6 is limited. Local agencies and school districts are only entitled to reimbursement when the costs incurred are mandated, or “ordered” or “commanded,” by the state.⁵⁰ Activities undertaken at the option or discretion of

⁴⁶ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

⁴⁷ See, Exhibit B, Test Claim Statement of Decision, pages 42-46; and Exhibit C, Parameters and Guidelines, pages 2-6.

⁴⁸ Register 01, No. 25, and Register 03, No. 18.

⁴⁹ Exhibit E, Decision, First Hearing.

⁵⁰ *Long Beach Unified School District v. State of California* (1990) 225 Cal.App.3d 155, 174.

local government, without legal compulsion or compulsion as a practical matter, do not trigger a state-mandated program within the meaning of article XIII B, section 6.⁵¹

As noted above, Education Code section 60851.5, as added by Statutes 2015, chapter 572, effective January 1, 2016, suspended the administration of the HSEE for the 2015-16, 2016-17, and 2017-18 school years.⁵² Section 60851.5 provides that “Notwithstanding Section 60851, the administration of the high school exit examination, and the requirement that each pupil completing grade 12 successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school, shall be suspended for the 2015-16, 2016-17, and 2017-18 school years.” Section 60851.6, also added by Statutes 2015, chapter 572, provides that “Notwithstanding Section 60851 or any other law, the governing board or body of a local educational agency, and the department on behalf of state special schools, shall grant a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination.”

As a result of this statute, the California Department of Education issued a letter on October 7, 2015, to all county and district school superintendents and “CAHSEE District Coordinators,” stating that “With the signing of SB 172, *there will be no administration of the CAHSEE for the 2015–16, 2016–17, and 2017–18 school years.* Students are encouraged to work with their local school district and adult education program to meet local and state graduation requirements.”⁵³ Thus, school districts were not required by state law to administer the HSEE beginning January 1, 2016, and students completing grade twelve were no longer required to successfully pass the HSEE as a condition of receiving a high school diploma.

Statutes 2017, chapter 641, effective January 1, 2018, then repealed Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, pertaining to the HSEE, commencing with section 60850 and including 60851.

The implementing test claim regulations were repealed after the filing of the Request for Mandate Redetermination, effective February 19, 2019.⁵⁴ Furthermore, it is established law that “. . . no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”⁵⁵ With the governing

⁵¹ *Department of Finance v. Commission on State Mandates* (2003) 30 Cal.4th 727, 731 (Kern High School Dist.); *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, 1365-1366 (POBRA).

⁵² Education Code section 60851.5 (Stats. 2015, ch. 572, § 2).

⁵³ Exhibit X, California Department of Education, Letter from Keric Ashley, Deputy Superintendent, District, School, and Innovation Branch, October 7, 2015; <https://www.cde.ca.gov/ta/tg/hs/cahseesuspendltr.asp> (accessed on Nov. 28, 2018), emphasis added.

⁵⁴ California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.)

⁵⁵ Government Code, section 11342.2.

statutes repealed, the implementing regulations would no longer be longer valid or effective, even had they not been repealed.

Accordingly, beginning with the suspension of the program on January 1, 2016, school districts were no longer mandated by state law to administer the HSEE to students in accordance with the Parameters and Guidelines for *High School Exit Examination*, 00-TC-06.

Finance urges the Commission to end the state’s liability for this program on January 1, 2016.⁵⁶ However, Government Code section 17570(f) expressly states that “[a] request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for . . . loss of reimbursement for that fiscal year.”⁵⁷ Thus, the period of reimbursement affected by a mandate redetermination is established by law and is based on the filing date of a request for mandate redetermination. This Request for Mandate Redetermination was filed June 28, 2018, establishing a loss of reimbursement beginning July 1, 2016.⁵⁸

Based on the foregoing, the Commission finds that the activities determined to impose a reimbursable mandate in *High School Exit Examination*, 00-TC-06, as set forth in Education Code sections 60850 and 60851, and California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, are no longer mandated by the state pursuant to Statutes 2015, chapter 572 (SB 172) and Statutes 2017, chapter 641 (AB 830), and no longer constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution, beginning July 1, 2016.

V. Conclusion

Based on the foregoing, the Commission approves the Request for Mandate Redetermination and concludes that the *High School Exit Examination*, 00-TC-06 mandate has ended based on a subsequent change in law and does not constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6 of the California Constitution beginning July 1, 2016.

⁵⁶ Exhibit A, Request for Mandate Redetermination, page 6.

⁵⁷ See also, section 1190.1(f) of the Commission’s regulations.

⁵⁸ Exhibit A, Request for Mandate Redetermination.

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 26, 2019, I served the:

- **Draft Expedited Amendment to Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued July 26, 2019**
- **Second Hearing Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued July 26, 2019**

Second Hearing: New Test Claim Decision

High School Exit Examination (00-TC-06), 17-MR-01

Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25 effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003

Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 July 26, 2019 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/26/19

Claim Number: 17-MR-01

Matter: High School Exit Examination (00-TC-06)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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July 26, 2019

Mr. Ed Hanson
Department of Finance
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Ms. Natalie Sidarous
Local Government Programs and
Services Division
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3301 C Street, Suite 740
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

**Re: Draft Expedited Amendment to Parameters and Guidelines, Schedule for
Comments, and Notice of Hearing**

High School Exit Examination (00-TC-06), 17-MR-01

Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and
Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections
1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220
and 1225, Register 01, No. 25 effective July 20, 2001 and Register 03, No. 18, effective
May 1, 2003

Department of Finance, Requester

Dear Mr. Hanson and Ms. Sidarous:

On July 26, 2019, the Commission on State Mandates (Commission) adopted the Decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted Test Claim Decision. The Second Hearing Draft Proposed Decision has been issued under separate cover. The Draft Expedited Amendment to Parameters and Guidelines, which will be taken up only if a new test claim decision is adopted to supersede the previously adopted Test Claim Decision, is enclosed for your review and comment. (Cal. Code Regs., tit. 2, § 1183.9.)

State law provides that reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program, approval of a statewide cost estimate, a specific legislative appropriation for such purpose, a timely-filed claim for reimbursement, and subsequent review of the reimbursement claim by the State Controller's Office.

Following is a description of the responsibilities of all parties and of the Commission during the parameters and guidelines phase.

Draft Expedited Amendment to Parameters and Guidelines

Pursuant to California Code of Regulations, title 2, section 1183.9, Commission staff has expedited the amendment to the parameters and guidelines process by preparing Draft Expedited Amendment to Parameters and Guidelines to assist the claimant. The proposed Amendment ends reimbursement for the program based on a subsequent change in law that eliminates the State's liability for the program.

Written Comments on Draft Expedited Amendment to Parameters and Guidelines

Proposed modifications and comments may be filed on the Draft Expedited Amendment to Parameters and Guidelines by **August 16, 2019**. (Cal. Code Regs., tit. 2, § 1183.9(b).) Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, §1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

Written Rebuttals

Written rebuttals may be filed within 15 days of service of the comments. (Cal. Code Regs., tit. 2, § 1183.9(c).)

Draft Proposed Decision and Proposed Amendment to Parameters and Guidelines

Commission staff will prepare a Draft Proposed Decision and Proposed Amendment to Parameters and Guidelines which will be issued for comment on or about August 19, 2019, pursuant to the Executive Director's authority to expedite matters pending before the Commission and without objection from the parties.

You are advised that comments filed with the Commission on State Mandates (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. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

The Proposed Decision and Amendment to the Parameters and Guidelines for this matter are tentatively set for hearing on **Friday, September 27, 2019**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California, and will only be taken up if the Commission first approves the Request for Mandate Redetermination.

The proposed decisions for the second hearing and for the Amendment to Parameters and Guidelines will be issued on or about September 13, 2019.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. Staff will no longer send reminder emails because the Commission does not have the resources to contact each party and interested party. Therefore,

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Mr. Hanson and Ms. Sidarous
July 26, 2019
Page 3

the last communication from Commission staff is the Proposed Decision which will be issued approximately two weeks prior to the hearing and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey
Executive Director

Amended: September 27, 2019

Adopted: April 26, 2006

J:\MANDATES\2000\tc\00-tc-06 (HS Exit Exam)\New TC Decision\Draft Expedited PGA.docx

DRAFT EXPEDITED AMENDMENT TO **PARAMETERS AND GUIDELINES**

Education Code Sections 60850 and 60851
Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539)
California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209,
1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, Register 01, No. 25, effective
July 20, 2001 and Register 03, No. 18 effective May 1, 2003¹

High School Exit Examination (00-TC-06)

As Modified by:

Statutes 2015, Chapter 572 (SB 172), and Statutes 2017, Chapter 641 (AB 830)

17-MR-01

Reimbursement for this Program Ends July 1, 2016

I. SUMMARY OF THE MANDATE

On March 25, 2004, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *High School Exit Examination* (00-TC-06) program. The Commission found that Education Code sections 60850, 60851, 60853, and 60855 as added in 1999 along with

¹ The captions for the Test Claim Decision and Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 included Education Code sections 60853 and 60855 and Sections “1200-1225” of the Title 5 regulations, all of which implement the California High School Exit Examination. However, sections 60853 and 60855 were denied by the Commission as not imposing any state-mandated duties on school districts and thus should not have been included in the caption for the Parameters and Guidelines. (Exhibit B, Test Claim Statement of Decision, pages 12, 15, 32.) In addition, the Parameters and Guidelines identify only the following regulations as imposing reimbursable state-mandated activities: California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220. (Exhibit B, Test Claim Statement of Decision, pages 43-47, 48; Exhibit C, Parameters and Guidelines, pages 3-7.) The Parameters and Guidelines, however, mistakenly omit a citation to section 1225 of the Title 5 regulations. As determined in the Test Claim Decision, section 1225 of the Title 5 regulations mandated the district superintendent to certify the accuracy of information regarding the number of exams for each test cycle to the California Department of Education (CDE) within a specified time. (Exhibit B, Test Claim Statement of Decision, pages 36, 48.) The Commission approved the activity mandated by section 1225 as a reimbursable state-mandated activity, and CDE did not later amend or move that activity to another regulation. (Exhibit B, Test Claim Statement of Decision, page 48.) Although that activity is correctly included in the Parameters and Guidelines, the activity is followed by an incorrect citation to section 1207. Therefore, the caption to this Mandate Redetermination includes all regulations mandating the activities approved by the Commission for reimbursement.

California Code of Regulations, Title 5, sections 1200-1225 that became effective in 2001 and 2003 constitute a new program or higher level of service and impose a reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514. The regulations were amended in May 2004 and August 2005 to add additional activities which were not included in the test claim decision and are not reimbursable under these parameters and guidelines. The Commission approved this test claim for the following reimbursable 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 High School Exit Exam (HSEE).

Documentation of adequate notice: maintaining documentation that the parent or guardian of each pupil received written notification of the HSEE.

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.

HSEE administration: administration of the HSEE, on designated dates to specified pupils, excluding a teacher's time administering the HSEE.

Test security/cheating: maintaining test security.

Reporting data to the Superintendent of Public Instruction (SPI): providing specific HSEE data on each pupil to the SPI or independent evaluators or the publisher.

The Commission denied any remaining alleged costs or activities, as identified on Attachment A, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

Effective January 1, 2016, Statutes 2015, chapter 572, added sections 60851.5 and 60851.6 to the Education Code. Section 60851.5 suspended the administration of the HSEE, and the requirement that grade 12 pupils pass it in order to graduate, for the 2015-16, 2016-17, and 2017-18 school years. Section 60851.6 required the granting of "a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination."

Effective January 1, 2018, Statutes 2017, chapter 641, repealed Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, commencing with section 60850 and including sections 60851, 60853, and 60855, all pertaining to the HSEE.

Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225 of title 5 of the California Code of Regulations were repealed effective February 19, 2019.²

On June 28, 2018, the Department of Finance (Finance) filed the Request for Redetermination of the High School Exit Examination, 00-TC-06 Test Claim. On September 27, 2019, the

² California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.)

Commission adopted a new Test Claim decision, finding that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, constitute a subsequent change in law that eliminates the state’s liability for reimbursement under the previously adopted Test Claim Decision, beginning July 1, 2016.

II. ELIGIBLE CLAIMANTS

Any “school district” as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a direct result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17570(f) provides that “[a] request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year.” The Request for Mandate Redetermination was filed on June 28, 2018 and therefore reimbursement ends beginning July 1, 2016.~~Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on January 25, 2001. Therefore, the costs incurred for compliance with Statutes of 1999x, Chapter 1 and Statutes of 1999, Chapter 135 are eligible for reimbursement on or after July 1, 2000.~~

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(2), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for the reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

- A. 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, 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)). Reimbursement is provided for notices delivered by the student or by U.S. Mail.
- B. 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.) Documentation may include a written copy of the notice or a record of mailing the notice.
- C. Determining English language skills:** Determining whether English-learning pupils³ possess sufficient English language skills at the time of the HSEE to be assessed⁴ with the HSEE (Cal. Code Regs., tit. 5, § 1217.)
- D. 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).).

A teacher's time administering the HSEE during the school day is not reimbursable for any of the following activities. Administration is limited to the following activities specified in the regulations:

1. Training a test examiner either by a test site or district coordinator as provided in the test publisher's manual (Cal. Code Regs., tit. 5, §§ 1200, subd. (g) and 1210, subd. (c)(3)).
2. 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 Individual Education Program (IEP) (§ 1215, subd. (a)(1)).
3. Accurately identifying eligible pupils who take the HSEE by school personnel at the test site through the use of photo-identification, positive recognition by the test examiner, or some equivalent means of identification. (Cal. Code Regs., tit. 5, § 1203.)
4. 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

⁴³ As defined in Education Code section 435, subdivision (a).

²⁴ Criteria are identified in Education Code section 313.

pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken. (Cal. Code Regs., tit. 5, § 1205.)

5. 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. (Cal. Code Regs., tit. 5, § 1206.)
6. 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. (Cal. Code Regs., tit. 5, § 1209.)
7. 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. (Cal. Code Regs., tit. 5, § 1209.)
8. 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. (Cal. Code Regs., tit. 5, § 1210.)
9. The HSEE district coordinator's duties listed in section 1209 and referenced below.

District Coordinator 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 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, (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 required, and returned all test materials,

answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

10. The HSEE test site coordinator's duties listed in section 1210 and referenced below. This individual is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE.

Test site coordinator's duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test examiner(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 examiners 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 examiner(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 1205, 1206 and 1207 of the title 5 regulations; (12) within three (3) 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. 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 examiner.

11. Delivery of HSEE booklets to the school test site no more than two working days before the test is to be administered. (Cal. Code Regs., tit. 5, § 1212.) **This activity was repealed on May 19, 2004, therefore this activity is not reimbursable after May 18, 2004.**

E. Test security/cheating: Doing the following to maintain security:

1. 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 (§ 1210, subd. (c)(7)(B)).
2. Limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (a)).

3. Having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (b) of section 1211.5 of the title 5 regulations. (Cal. Code Regs., tit. 5, § 1210, subd. (c)(5).)
4. 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. (Cal. Code Regs., tit. 5, § 1210 (c)(5), § 1211, subd. (a), § 1211.5 (b)(4).)
5. 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 (Cal. Code Regs., tit. 5, § 1210, subd. (c)(7)(A)).
6. For persons with access to the HSEE (including test site coordinators and testexaminers) to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit set forth in subdivision (g). (Cal. Code Regs., tit. 5, § 1211.5, subd. (c).)
7. HSEE district and test site coordinators control of inventory and use of appropriate inventory control forms to monitor and track test inventory. (Cal. Code Regs., tit. 5, § 1211 subd. (b).)
8. 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. (Cal. Code Regs., tit. 5, § 1211, subd. (c).)
9. Providing secure transportation within the district for test materials once they have been delivered to the district. (Cal. Code Regs., tit. 5, § 1211, subd. (d).)
10. Not scoring the test 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. (Cal. Code Regs., tit. 5, § 1220.)

F. Reporting data to the SPI: Providing HSEE data to the SPI or independent evaluators or the publisher is reimbursable. 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~~1207).

The regulation (§1207) was amended in May 2004 and August 2005 to add the following data that must be submitted to the state (which are not reimbursable under these parameters and guidelines): (1) pupil's full name; (2) date of English proficiency reclassification; (3) if R-FEP pupil scored proficient or above on the California English-Language Arts Standards Test three (3) times since reclassification; (4) use of modifications during the exam [accommodations are reimbursed]; (5) participation in California Alternate Performance Assessment (CAPA); (6) school and district CBEDS enrollment; (7) district and county of residence for students with disabilities; (8) California School Information Services (CSIS) Student Number, once assigned.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursable claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for

purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁵ is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which

³⁵ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documentation used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including, but not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

Reimbursement shall be offset by funding provided in the State Budget for the HSEE Program.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the claiming instructions shall constitute notice of the right of local agencies and schools districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

~~The Statement of Decisions on the Test Claim, Mandate Redetermination, Parameters and Guidelines, and Amendments thereto are~~ legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record ~~for the test claim~~. The administrative record, ~~including the Statement of Decision~~, is on file with the Commission.

ATTACHMENT A

The Commission found that the following activities are not reimbursable. (See Statement of Decision adopted on March 25, 2004.)

1. Duties of the Superintendent of Public Instruction (Ed. Code, § 60850, subs. (a), (b), (d), (e)(2), (e)(3), (e)(4), & (h)).
2. Field testing of the HSEE (Ed. Code, § 60850, subd. (c)).
3. Providing HSEE results to all pupils.
4. Administering the HSEE to adult students.
5. Restructuring academic offerings (Ed. Code, § 60853, subs. (b)(c)).
6. Using test proctors to administer the HSEE (Cal. Code Regs, tit.5, § 1200, subd. (i)).
7. Permissive accommodations (Cal. Code Regs., tit., 5, §§ 1216, subd. (d), 1218 & 1219).
8. Federally mandated accommodations (Cal. Code Regs, tit. 5, §§ 1215.5 & 1216; Ed. Code, § 60850, subd (g).)
9. A teacher's time in administering the examination.
10. Supplemental instruction (Ed. Code, §§ 60851, subd. (f) & 60853, subd. (a)).
11. Evaluations of the HSEE by the SPI (Ed. Code, § 60855).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 26, 2019, I served the:

- **Draft Expedited Amendment to Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued July 26, 2019**
- **Second Hearing Draft Proposed Decision, Schedule for Comments, and Notice of Hearing issued July 26, 2019**

Second Hearing: New Test Claim Decision

High School Exit Examination (00-TC-06), 17-MR-01

Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25 effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003

Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 July 26, 2019 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/26/19

Claim Number: 17-MR-01

Matter: High School Exit Examination (00-TC-06)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES 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

ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTION 1183.14

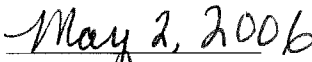
(Adopted on April 26, 2006)

PARAMETERS AND GUIDELINES

On April 26, 2006, the Commission on State Mandates adopted the attached Parameters and Guidelines.



PAULA HIGASHI, Executive Director



Date

PARAMETERS AND GUIDELINES

Education Code Sections 60850, 60851, 60853, and 60855

Statutes of 1999x, Chapter 1
Statutes of 1999, Chapter 135

California Code of Regulations, Title 5, Sections 1200-1225
(regulations effective July 20, 2001 [Register 01, No. 25],
regulations effective May 1, 2003 [Register 03, No. 18])

High School Exit Examination (00-TC-06)

Trinity Union High School District, Claimant

I. SUMMARY OF THE MANDATE

On March 25, 2004, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *High School Exit Examination (00-TC-06)* program. The Commission found that Education Code sections 60850, 60851, 60853, and 60855 as added in 1999 along with California Code of Regulations, Title 5, sections 1200-1225 that became effective in 2001 and 2003 constitute a new program or higher level of service and impose a reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514. The regulations were amended in May 2004 and August 2005 to add additional activities which were not included in the test claim decision and are not reimbursable under these parameters and guidelines. The Commission approved this test claim for the following reimbursable 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 High School Exit Exam (HSEE).

Documentation of adequate notice: maintaining documentation that the parent or guardian of each pupil received written notification of the HSEE.

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.

HSEE administration: administration of the HSEE, on designated dates to specified pupils, excluding a teacher's time administering the HSEE.

Test security/cheating: maintaining test security.

Reporting data to the Superintendent of Public Instruction (SPI): providing specific HSEE data on each pupil to the SPI or independent evaluators or the publisher.

The Commission denied any remaining alleged costs or activities, as identified on Attachment A, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

II. ELIGIBLE CLAIMANTS

Any “school district” as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a direct result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on January 25, 2001. Therefore, the costs incurred for compliance with Statutes of 1999x, Chapter 1 and Statutes of 1999, Chapter 135 are eligible for reimbursement on or after July 1, 2000.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(2), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, “I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct,” and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for the reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

- A. **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, 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)). Reimbursement is provided for notices delivered by the student or by U.S. Mail.

- B. 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.) Documentation may include a written copy of the notice or a record of mailing the notice.
- C. Determining English language skills:** Determining whether English-learning pupils¹ possess sufficient English language skills at the time of the HSEE to be assessed² with the HSEE (Cal. Code Regs., tit. 5, § 1217.)
- D. 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)).

A teacher's time administering the HSEE during the school day is not reimbursable for any of the following activities. Administration is limited to the following activities specified in the regulations:

1. Training a test examiner either by a test site or district coordinator as provided in the test publisher's manual (Cal. Code Regs., tit. 5, §§ 1200, subd. (g) and 1210, subd. (c)(3)).
2. 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 Individual Education Program (IEP) (§ 1215, subd. (a)(1)).
3. Accurately identifying eligible pupils who take the HSEE by school personnel at the test site through the use of photo-identification, positive recognition by the test examiner, or some equivalent means of identification. (Cal. Code Regs., tit. 5, § 1203.)
4. 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. (Cal. Code Regs., tit. 5, § 1205.)
5. 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. (Cal. Code Regs., tit. 5, § 1206.)
6. 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

¹ As defined in Education Code section 435, subdivision (a).

² Criteria are identified in Education Code section 313.

the HSEE of the identity and contact information of that individual. (Cal. Code Regs., tit. 5, § 1209.)

7. 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. (Cal. Code Regs., tit. 5, § 1209.)
8. 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. (Cal. Code Regs., tit. 5, § 1210.)
9. The HSEE district coordinator's duties listed in section 1209 and referenced below.

District Coordinator 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 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, (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 required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

10. The HSEE test site coordinator's duties listed in section 1210 and referenced below. This individual is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE.

Test site coordinator's duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test examiner(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 examiners 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 examiner(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 1205, 1206 and 1207 of the title 5 regulations; (12) within three (3) 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. 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 examiner.

11. Delivery of HSEE booklets to the school test site no more than two working days before the test is to be administered. (Cal. Code Regs., tit. 5, § 1212.) **This activity was repealed on May 19, 2004, therefore this activity is not reimbursable after May 18, 2004.**

E. Test security/cheating: Doing the following to maintain security:

1. 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 (§ 1210, subd. (c)(7)(B)).
2. Limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (a)).
3. Having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (b) of section 1211.5 of the title 5 regulations. (Cal. Code Regs., tit. 5, § 1210, subd. (c)(5).)
4. 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. (Cal. Code Regs., tit. 5, § 1210 (c)(5), § 1211, subd. (a), § 1211.5 (b)(4).)

5. 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 (Cal. Code Regs., tit. 5, § 1210, subd. (c)(7)(A)).
6. For persons with access to the HSEE (including test site coordinators and testexaminers) to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit set forth in subdivision (g). (Cal. Code Regs., tit. 5, § 1211.5, subd. (c).)
7. HSEE district and test site coordinators control of inventory and use of appropriate inventory control forms to monitor and track test inventory. (Cal. Code Regs., tit. 5, § 1211 subd. (b).)
8. 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. (Cal. Code Regs., tit. 5, § 1211, subd. (c).)
9. Providing secure transportation within the district for test materials once they have been delivered to the district. (Cal. Code Regs., tit. 5, § 1211, subd. (d).)
10. Not scoring the test 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. (Cal. Code Regs., tit. 5, § 1220.)

F. Reporting data to the SPI: Providing HSEE data to the SPI or independent evaluators or the publisher is reimbursable. 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 (§ 1207).

The regulation (§1207) was amended in May 2004 and August 2005 to add the following data that must be submitted to the state (which are not reimbursable under these parameters and guidelines): (1) pupil's full name; (2) date of English proficiency reclassification; (3) if R-FEP pupil scored proficient or above on the California English-Language Arts Standards Test three (3) times since reclassification; (4) use of modifications during the exam [accommodations are reimbursed]; (5) participation in California Alternate Performance Assessment (CAPA); (6) school and district CBEDS enrollment; (7) district and county of residence for students with disabilities; (8) California School Information Services (CSIS) Student Number, once assigned.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursable claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each

employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter³ is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documentation used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including, but not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

³ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

Reimbursement shall be offset by funding provided in the State Budget for the HSEE Program.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the claiming instructions shall constitute notice of the right of local agencies and schools districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

ATTACHMENT A

The Commission found that the following activities are not reimbursable. (See Statement of Decision adopted on March 25, 2004.)

1. Duties of the Superintendent of Public Instruction (Ed. Code, § 60850, subs. (a), (b), (d), (e)(2), (e)(3), (e)(4), & (h)).
2. Field testing of the HSEE (Ed. Code, § 60850, subd. (c)).
3. Providing HSEE results to all pupils.
4. Administering the HSEE to adult students.
5. Restructuring academic offerings (Ed. Code, § 60853, subs. (b)(c)).
6. Using test proctors to administer the HSEE (Cal. Code Regs, tit.5, § 1200, subd. (i)).
7. Permissive accommodations (Cal. Code Regs., tit., 5, §§ 1216, subd. (d), 1218 & 1219).
8. Federally mandated accommodations (Cal. Code Regs, tit. 5, §§ 1215.5 & 1216; Ed. Code, § 60850, subd (g).)
9. A teacher's time in administering the examination.
10. Supplemental instruction (Ed. Code, §§ 60851, subd. (f) & 60853, subd. (a)).
11. Evaluations of the HSEE by the SPI (Ed. Code, § 60855).



July 26, 2019

Mr. Ed Hanson
Department of Finance
915 L Street, 7th Floor
Sacramento, CA 95814

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: First Hearing Decision

First Hearing: Adequate Showing

High School Exit Examination (00-TC-06), 17-MR-01

Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25 effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003; as alleged to be modified by: Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

Department of Finance, Requester

Dear Mr. Hanson:

On July 26, 2019, the Commission on State Mandates (Commission) adopted the Decision on the adequate showing issue for the above-named matter and directed staff to notice a second hearing to determine whether to adopt a new Test Claim Decision to supersede the previously adopted Test Claim Decision. (Cal. Code Regs., tit. 2, § 1190.5(b).)

Sincerely,

Heather Halsey
Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE MANDATE REDETERMINATION:
FIRST HEARING: ADEQUATE SHOWING
ON:

Education Code Sections 60850, 60851,
Statutes of 1999x, Chapter 1 (SB 2) and Statutes
of 1999, Chapter 135 (AB 2539)

California Code of Regulations, Title 5, Sections
1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210,
1211, 1211.5, 1212, 1215, 1217, 1220, and 1225,
Register 01, No. 25, effective July 20, 2001 and,
Register 03, No. 18, effective May 1, 2003¹

As Alleged to be Modified by: Statutes
2015, Chapter 572 (SB 172) and Statutes
2017, Chapter 641 (AB 830)

Filed on June 28, 2018

By the Department of Finance, Requester

Case No.: 17-MR-01

High School Exit Examination (00-TC-06)

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

(Adopted July 26, 2019)

(Served July 26, 2019)

¹ The captions for the Test Claim Decision and Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 included Education Code sections 60853 and 60855 and Sections “1200-1225” of the Title 5 regulations, all of which implement the California High School Exit Examination. However, sections 60853 and 60855 were denied by the Commission as not imposing any state-mandated duties on school districts and thus should not have been included in the caption for the Parameters and Guidelines. (Exhibit B, Test Claim Statement of Decision, pages 12, 15, 32.) In addition, the Parameters and Guidelines identify only the following regulations as imposing reimbursable state-mandated activities: California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220. (Exhibit B, Test Claim Statement of Decision, pages 43-47, 48; Exhibit C, Parameters and Guidelines, pages 3-7.) The Parameters and Guidelines, however, mistakenly omit a citation to section 1225 of the Title 5 regulations. As determined in the Test Claim Decision, section 1225 of the Title 5 regulations mandated the district superintendent to certify the accuracy of information regarding the number of exams for each test cycle to CDE within a specified time. (Exhibit B, Test Claim Statement of Decision, pages 36, 48.) The Commission approved the activity mandated by section 1225 as a reimbursable state-mandated activity, and the California Department of Education (CDE) did not later amend or move that activity to another regulation. (Exhibit B, Test Claim Statement of Decision, page 48.) Although that activity is correctly included in the Parameters and Guidelines, the activity is followed by an incorrect citation to section 1207. Therefore, the caption to this Mandate Redetermination includes all regulations mandating the activities approved by the Commission for reimbursement.

DECISION

The Commission on State Mandates (Commission) heard and decided this Mandate Redetermination during a regularly scheduled hearing on July 26, 2019. Amber Alexander appeared on behalf of the Department of Finance.

Government Code section 17570 and section 1190.1 et seq. of the Commission’s regulations establish the mandate redetermination process. In addition, the laws applicable to the Commission’s determination of a reimbursable state-mandated program are article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181.1 et seq., and related case law.

The Commission adopted the Proposed Decision at the hearing by a vote of 7-0, and directed staff to notice a second hearing to determine whether to adopt a new Test Claim Decision to supersede the previously adopted Test Claim Decision as follows:

Member	Vote
Lee Adams, County Supervisor	Yes
Keely Bosler, Director of the Department of Finance, Chairperson	Yes
Mark Hariri, Representative of the State Treasurer	Yes
Jeannie Lee, Representative of the Director of the Office of Planning and Research	Yes
Sarah Olsen, Public Member	Yes
Carmen Ramirez, City Council Member	Yes
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	Yes

Summary of the Findings

The Commission finds that the Department of Finance (Finance) has made an adequate showing that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *High School Exit Examination*, 00-TC-06 mandate may be modified based on a subsequent change in law, such that Finance has a substantial probability of prevailing at the second hearing. Specifically, Statutes 2015, chapter 572, section 2 suspended administration of the high school exit examination (HSEE, or CAHSEE) for the 2015-2016, 2016-2017, and 2017-2018 school years, and also suspended the requirement that each pupil completing grade 12 in said years successfully pass the high school exit examination in order to receive a diploma of graduation or to graduate from high school. Statutes 2017, chapter 641, section 16, effective January 1, 2018, then expressly repealed the statutes that impose the mandate.

After the Request for Mandate Redetermination was filed, the regulations were repealed effective February 19, 2019. And though the repealed regulations were not pled in the Request for Mandate Redetermination, it is established law that “[w]henver by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to

effectuate the purpose of the statute.”² As the statutes giving rise to the test claim regulations were suspended and then repealed by the 2015 and 2017 statutes, the regulations thus became invalid at that time. Pursuant to Government Code section 17570(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted Test Claim Decision.

COMMISSION FINDINGS

I. Chronology

- 06/28/2018 Finance filed the Request for Mandate Redetermination.³
- 08/31/2018 The State Controller’s Office (Controller) filed comments on the Request for Mandate Redetermination.⁴
- 04/30/2019 Commission staff issued the Draft Proposed Decision, First Hearing.⁵

II. Background

On March 25, 2004, the Commission adopted the Test Claim Statement of Decision in *High School Exit Examination*, 00-TC-06, finding that Education Code sections 60850 and 60851, Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539), and Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18, which implement the Education Code sections, impose a reimbursable state-mandated new program on school districts within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. On April 26, 2006, the Commission adopted the Parameters and Guidelines approving reimbursement for the following reimbursable activities:

- A. 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, 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)). Reimbursement is provided for notices delivered by the student or by U.S. Mail.
- B. 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.) Documentation may include a written copy of the notice or a record of mailing the notice.

² Government Code, section 11342.2.

³ Exhibit A, Request for Mandate Redetermination.

⁴ Exhibit D, Controller’s Comments on the Request for Mandate Redetermination.

⁵ Exhibit E, Draft Proposed Decision, First Hearing.

- C. Determining English language skills:** Determining whether English-learning pupils⁶ possess sufficient English language skills at the time of the HSEE to be assessed⁷ with the HSEE (Cal. Code Regs., tit. 5, § 1217.)
- D. 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)).

A teacher's time administering the HSEE during the school day is not reimbursable for any of the following activities. Administration is limited to the following activities specified in the regulations:

1. Training a test examiner either by a test site or district coordinator as provided in the test publisher's manual (Cal. Code Regs., tit. 5, §§ 1200, subd. (g) and 1210, subd. (c)(3)).
2. 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 Individual Education Program (IEP) (§ 1215, subd. (a)(1)).
3. Accurately identifying eligible pupils who take the HSEE by school personnel at the test site through the use of photo-identification, positive recognition by the test examiner, or some equivalent means of identification. (Cal. Code Regs., tit. 5, § 1203.)
4. 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. (Cal. Code Regs., tit. 5, § 1205.)
5. 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. (Cal. Code Regs., tit. 5, § 1206.)
6. 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. (Cal. Code Regs., tit. 5, § 1209.)
7. 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

⁶ As defined in Education Code section 435, subdivision (a).

⁷ Criteria are identified in Education Code section 313.

part of the HSEE in the manner required by the publisher. (Cal. Code Regs., tit. 5, § 1209.)

8. 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. (Cal. Code Regs., tit. 5, § 1210.)
9. The HSEE district coordinator's duties listed in section 1209 and referenced below.

District Coordinator 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 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, (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 required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

10. The HSEE test site coordinator's duties listed in section 1210 and referenced below. This individual is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE.

Test site coordinator's duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test examiner(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 examiners 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 examiner(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 1205, 1206 and 1207 of the title 5 regulations; (12) within three (3) 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. 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 examiner.

11. Delivery of HSEE booklets to the school test site no more than two working days before the test is to be administered. (Cal. Code Regs., tit. 5, § 1212.) **This activity was repealed on May 19, 2004, therefore this activity is not reimbursable after May 18, 2004.**

E. Test security/cheating: Doing the following to maintain security:

1. 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 (§ 1210, subd. (c)(7)(B)).
2. Limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (a)).
3. Having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (b) of section 1211.5 of the title 5 regulations. (Cal. Code Regs., tit. 5, § 1210, subd. (c)(5).)
4. 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. (Cal. Code Regs., tit. 5, § 1210 (c)(5), § 1211, subd. (a), § 1211.5 (b)(4).)
5. 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 (Cal. Code Regs., tit. 5, § 1210, subd. (c)(7)(A)).

6. For persons with access to the HSEE (including test site coordinators and [sic] testexaminers) to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit set forth in subdivision (g). (Cal. Code Regs., tit. 5, § 1211.5, subd. (c).)
7. HSEE district and test site coordinators control of inventory and use of appropriate inventory control forms to monitor and track test inventory. (Cal. Code Regs., tit. 5, § 1211 subd. (b).)
8. 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. (Cal. Code Regs., tit. 5, § 1211, subd. (c).)
9. Providing secure transportation within the district for test materials once they have been delivered to the district. (Cal. Code Regs., tit. 5, § 1211, subd. (d).)
10. Not scoring the test 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. (Cal. Code Regs., tit. 5, § 1220.)

F. Reporting data to the SPI: Providing HSEE data to the SPI or independent evaluators or the publisher is reimbursable. 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 (§ 1207).

The regulation (§1207) was amended in May 2004 and August 2005 to add the following data that must be submitted to the state (which are not reimbursable under these parameters and guidelines): (1) pupil’s full name; (2) date of English proficiency reclassification; (3) if R-FEP pupil scored proficient or above on the California English-Language Arts Standards Test three (3) times since reclassification; (4) use of modifications during the exam [accommodations are reimbursed]; (5) participation in California Alternate Performance Assessment (CAPA); (6) school and district CBEDS enrollment; (7) district and county of residence for students with disabilities; (8) California School Information Services (CSIS) Student Number, once assigned.⁸

The Alleged Subsequent Change in Law

Effective January 1, 2016, Statutes 2015, chapter 572 added sections 60851.5 and 60851.6 to the Education Code. Section 60851.5 provides that “Notwithstanding Section 60851, the

⁸ Exhibit C, Parameters and Guidelines.

administration of the high school exit examination, and the requirement that each pupil completing grade 12 successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school, shall be suspended for the 2015-16, 2016-17, and 2017-18 school years.” Section 60851.6 provides that “Notwithstanding Section 60851 or any other law, the governing board or body of a local educational agency, and the department on behalf of state special schools, shall grant a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination.”

Effective January 1, 2018, Statutes 2017, chapter 641 repealed Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, commencing with section 60850, all pertaining to the HSEE.

After the request for Mandate Redetermination was filed, California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18, which were found to impose reimbursable state mandate by the Commission in *High School Exit Examination*, 00-TC-06, were repealed effective February 19, 2019, in accordance with the repeal of the test claim statutes.⁹

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process for a test claim decision to be redetermined and superseded by a new test claim decision if a subsequent change in law, as defined, has modified the state’s liability for reimbursement. The redetermination process calls for a two-hearing process. At the first hearing, the requester must make “an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6(a) of the California Constitution.”¹⁰ A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.¹¹

An “adequate showing” is determined in the Commission’s regulations as follows:

⁹ California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.)

¹⁰ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹¹ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.¹²

If the Commission finds, at the first hearing, that:

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.¹³

III. Positions of the Parties, Interested Parties, and Interested Persons

A. Department of Finance, Requester

Finance asserts that Statutes 2015, chapter 572, effective January 1, 2016, “suspended the administration of the [HSEE] and the requirement that students must pass the [HSEE] to graduate high school for school years 2015-16 through 2017-18, and retroactively granted high school diplomas to grade 12 students who successfully fulfilled graduation requirements but did not graduate as a result of not passing the [HSEE].”¹⁴ Finance also asserts that Statutes 2017, chapter 641, effective January 1, 2018, “repealed the authorizing statutes for the [HSEE], effectively terminating the administration of the [HSEE].”¹⁵

Accordingly, Finance states that “[g]iven the suspension and repeal of the authorizing statute, any required activities pursuant to the California Code of Regulations related to the [HSEE] are unsupported by statute and should no longer be a basis for mandated activities.”¹⁶ Finance concludes that “the reimbursable activities identified in the High School Exit Examination Statement of Decision (00-TC-06) cease to be eligible for reimbursements effective January 1, 2016. Therefore, based on the change in law, the state’s liability for mandate reimbursement pursuant to Article XIII B, Section 6 of the California Constitution should be zero.”¹⁷ Finance did not comment on the Draft Proposed Decision.

B. State Controller’s Office

The Controller concurs with Finance’s request to adopt a new test claim decision “to supersede the prior decision on the High School Exit Examination mandate program based upon the

¹² California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

¹³ California Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

¹⁴ Exhibit A, Request for Mandate Redetermination, page 5.

¹⁵ Exhibit A, Request for Mandate Redetermination, page 5.

¹⁶ Exhibit A, Request for Mandate Redetermination, page 5.

¹⁷ Exhibit A, Request for Mandate Redetermination, page 6.

suspension and repeal of the authorizing statute.”¹⁸ The Controller did not comment on the Draft Proposed Decision.

C. School Districts

No comments have been filed by any of the eligible claimant school districts or any of the school district associations that represent them.

IV. Discussion

Under Government Code section 17570, upon request, the Commission may consider the adoption of a new test claim decision to supersede a prior test claim decision based on a subsequent change in law which modifies the state’s liability.

The first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission’s regulations, only whether the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law, as defined. Therefore, the analysis will be limited to whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”¹⁹ If answered in the affirmative, a thorough mandates analysis to determine whether and to what extent the state’s liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will then be prepared for the second hearing on this matter.

A. Statutes 2015, Chapter 572 and Statutes 2017, Chapter 641 Constitute a Subsequent Change in Law, Within the Meaning of Government Code Section 17570.

Government Code section 17570(b) states that the Commission may adopt a new test claim decision to supersede a previously adopted test claim decision only upon a showing that, pursuant to article XIII B section 6, the state’s liability has been modified based on a subsequent change in law. A subsequent change in law is defined in Government Code section 17570(a)(2) as:

A change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a

¹⁸ Exhibit D, Controller’s Comments on the Request for Mandate Redetermination.

¹⁹ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21). This regulation describes the standard for the first hearing as follows:

The first hearing shall be limited to the issue of whether the requester has made an adequate showing which identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution. The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.

“subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.²⁰

Finance, in its request, alleges that a subsequent change in law requires a finding that there are no longer any costs mandated by the state, in that Statutes 2015, chapter 572 suspended, and Statutes 2017, chapter 641 repealed the statutory provisions that make up the mandate, and thus all force and effect of the regulatory provisions implementing the test claim statutes has been removed.²¹

The Test Claim Decision found that certain provisions in sections 60850 and 60851 imposed reimbursable activities – specifically, to provide adequate notice to parents or guardians of transfer students about the HSEE and to administer the HSEE.²²

The Commission finds that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, constitute a subsequent change in law within the meaning of Government Code section 17570.

Statutes 2015, chapter 572 became effective January 1, 2016, and added section 60851.5 to the Education Code to provide that “Notwithstanding Section 60851, the administration of the high school exit examination, and the requirement that each pupil completing grade 12 successfully pass the high school exit examination as a condition of receiving a diploma of graduation or a condition of graduation from high school, shall be suspended for the 2015-16, 2016-17, and 2017-18 school years.” The statute also added section 60851.6, which provides that “Notwithstanding Section 60851 or any other law, the governing board or body of a local educational agency, and the department on behalf of state special schools, shall grant a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination.”

On that same day, the California Department of Education sent a letter to all county and district school superintendents, and copied the letter to “CAHSEE District Coordinators,” which stated the following:

[SB 172] suspends the administration of the California High School Exit Examination (CAHSEE) and the requirement that students completing grade twelve successfully pass the high school exit examination as a condition of receiving a diploma of graduation from high school for the 2015–16, 2016–17, and 2017–18 school years. The law also requires local educational agencies (LEAs) to grant a diploma to any student who completed grade twelve in the 2003–04 school year, or a subsequent school year, and has met all applicable graduation requirements other than passage of the high school exit examination.

²⁰ Government Code section 17570(a)(2).

²¹ Exhibit A, Request for Mandate Redetermination, pages 5-6.

²² Exhibit B, Test Claim Statement of Decision, pages 16-27.

The law will not take effect until January 1, 2016, at which time LEAs shall be permitted to issue diplomas to eligible students.²³

The letter also stated that “With the signing of SB 172, there will be no administrations of the CAHSEE for the 2015–16, 2016–17, and 2017–18 school years. Students are encouraged to work with their local school district and adult education program to meet local and state graduation requirements.”²⁴

Statutes 2017, chapter 641, effective January 1, 2018, then repealed all the sections in the Education Code regarding the creation and administration of the HSEE, and was specifically intended to “eliminate the [HSEE]” and “remove it as a condition of receiving a diploma of graduation or a condition of graduation from high school.”²⁵

The Statement of Decision and the Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 found reimbursable activities imposed by California Code of Regulations, title 5, sections 1200(g), 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1210(c)(3), 1210(c)(5), 1210(c)(7)(A), 1210(c)(7)(B), 1211(a), 1211.5(b), 1211.5(b)(4), 1211.5(c), 1212, 1215(a)(1) 1217, 1220, and 1225.²⁶ All these regulatory sections are located in Subchapter 6 of Chapter 2 of Division 1 of Title 5 of the California Code of Regulations, with Subchapter 6 pertaining solely to the HSEE.²⁷ In addition, the entirety of Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, which pertained solely to the creation and administration of the HSEE, and included sections 60850 and 60851, has been repealed.²⁸ These two statutory sections were the only test claim statutes approved in the Commission’s March 25, 2004 Statement of Decision,²⁹ and were the reference and authority for the regulations found to constitute reimbursable activities in the Parameters and Guidelines.³⁰ Therefore, all regulatory sections found to impose reimbursable state-mandated activities in the Test Claim were suspended for the 2015-2016, 2016-2017, and 2017-2018 school years when the program was suspended by Statutes 2015, chapter 572, and the Education Code sections approved by the Commission were repealed by Statutes 2017, chapter 641, thus removing the authority for the regulations.

²³ Exhibit F, California Department of Education, Letter from Keric Ashley, Deputy Superintendent, District, School, and Innovation Branch, October 7, 2015; <https://www.cde.ca.gov/ta/tg/hs/cahseesuspendltr.asp> (accessed on Nov. 28, 2018).

²⁴ Exhibit F, California Department of Education, Letter from Keric Ashley, Deputy Superintendent, District, School, and Innovation Branch, October 7, 2015; <https://www.cde.ca.gov/ta/tg/hs/cahseesuspendltr.asp> (accessed on Nov. 28, 2018).

²⁵ Exhibit A, Request for Mandate Redetermination, page 14.

²⁶ See, Exhibit B, Test Claim Statement of Decision, pages 42-48; and Exhibit C, Parameters and Guidelines, pages 2-6.

²⁷ Register 01, No. 25 and Register 03, No. 18.

²⁸ Stats. 2017, ch. 641 (AB 830), effective January 1, 2018.

²⁹ Exhibit B, Test Claim Statement of Decision.

³⁰ Exhibit C, Parameters and Guidelines, pages 2-6.

Based on the foregoing, the Commission finds that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, constitute a subsequent change in law, as defined.

B. The Requester Has Made an Adequate Showing that the State’s Liability May Be Modified Based on a Subsequent Change in Law.

At this hearing, the Commission is required only to determine whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”³¹ If the Commission determines that the request has a substantial possibility of prevailing at the second hearing, the Government Code provides that the Commission shall notice a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted Test Claim Decision.³²

Here, the subsequent changes in law are Statutes 2015, Chapter 572 and Statutes 2017, Chapter 641, which added sections to the Education Code expressly suspending the administration of the HSEE program for the 2015–2016, 2016–2017, and 2017–2018 school years, then repealing the sections serving as the basis for the HSEE regulations. After the request for Mandate Redetermination was filed, the regulations were repealed effective February 19, 2019.³³ And though the repealed regulations were not pled, it is established law that “[w]henver by the express or implied terms of any statute a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”³⁴ As the statutes giving rise to the test claim regulations were suspended and then repealed by 2015 and 2017 statutes, the regulations thus became invalid at that time.

Therefore, Finance has made an adequate showing that the state’s liability may be modified based on Statutes 2015, chapter 572, and Statutes 2017, chapter 641, such that there is a substantial possibility that the request for a new test claim decision will prevail at the second hearing on this matter.

V. Conclusion

Based on the foregoing, the Commission finds that the requester has made an adequate showing that the state’s liability for the *High School Exit Examination*, 00-TC-06, mandate may be modified based on a subsequent change in law and that Finance has a substantial probability of prevailing at the second hearing. The Commission hereby directs Commission staff to notice the second hearing for September 27, 2019 to determine whether to adopt a new test claim decision to supersede the Commission’s previously adopted Test Claim Decision on *High School Exit Examination*, 00-TC-06.

³¹ California Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

³² Government Code, section 17570(d)(4) (Stats. 2010, ch. 719 (SB 856)).

³³ Register 2019, No. 8.

³⁴ Government Code, section 11342.2.



RE: **Decision**

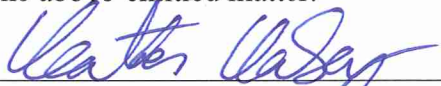
First Hearing: Adequate Showing

High School Exit Examination (00-TC-06), 17-MR-01

Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25 effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003

Department of Finance, Requester

On July 26, 2019, the foregoing Decision of the Commission on State Mandates was adopted on the above-entitled matter.



Heather Halsey, Executive Director

Dated: July 26, 2019

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On July 26, 2019, I served the:

- **First Hearing Decision adopted July 26, 2019**

First Hearing: Adequate Showing

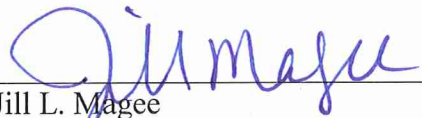
High School Exit Examination (00-TC-06), 17-MR-01

Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25 effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003; as alleged to be modified by: Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

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 July 26, 2019 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
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Sacramento, CA 95814
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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 6/26/19

Claim Number: 17-MR-01

Matter: High School Exit Examination (00-TC-06)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

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August 19, 2019

Mr. Ed Hanson
Department of Finance
915 L Street, 7th Floor
Sacramento, CA 95814

Ms. Natalie Sidarous
Local Government Programs and
Services Division
State Controller's Office
3301 C Street, Suite 740
Sacramento, CA 95816

And Parties, Interested Parties, and Interested Persons (See Mailing List)

Re: Draft Proposed Decision and Proposed Amendment to Parameters and Guidelines, Schedule for Comments, and Notice of Hearing

Second Hearing: New Test Claim Decision

High School Exit Examination (00-TC-06), 17-MR-01

Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25, effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003; as alleged to be modified by: Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

Department of Finance, Requester

Dear Mr. Hanson and Ms. Sidarous:

The Draft Proposed Decision and Proposed Amendment to Parameters and Guidelines for the above-captioned matter is enclosed for your review and comment.

Written comments may be filed on the Draft Proposed Decision and Proposed Amendment to Parameters and Guidelines by **September 9, 2019**. Please note that all representations of fact submitted to the Commission must be signed under penalty of perjury by persons who are authorized and competent to do so and must be based upon the declarant's personal knowledge, information, or belief. (Cal. Code Regs., tit. 2, § 1187.5.) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over an objection in civil actions. (Cal. Code Regs., tit. 2, § 1187.5.) The Commission's ultimate findings of fact must be supported by substantial evidence in the record.¹

You are advised that comments filed with the Commission on State Mandates (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. Refer to http://www.csm.ca.gov/dropbox_procedures.php on the Commission's website for electronic filing instructions. (Cal. Code Regs., tit. 2, § 1181.3.)

¹ Government Code section 17559(b), which provides that a claimant or the state may commence a proceeding in accordance with the provisions of section 1094.5 of the Code of Civil Procedure to set aside a decision of the Commission on the ground that the Commission's decision is not supported by substantial evidence in the record.

Mr. Hanson and Ms. Sidarous
August 19, 2019
Page 2

If you would like to request an extension of time to file comments, please refer to section 1187.9(a) of the Commission's regulations.

Hearing

This matter is set for hearing on **Friday, September 27, 2019**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. The Proposed Decision and Proposed Amendment to Parameters and Guidelines will be issued on or about September 13, 2019.

Please notify Commission staff not later than the Wednesday prior to the hearing that you or a witness you are bringing plan to testify and please specify the names of the people who will be speaking for inclusion on the witness list. Staff will no longer send reminder emails because the Commission does not have the resources to contact each party and interested party. Therefore, the last communication from Commission staff is the Proposed Decision which will be issued approximately two weeks prior to the hearing and it is incumbent upon the participants to let Commission staff know if they wish to testify or bring witnesses.

If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Sincerely,



Heather Halsey
Executive Director

ITEM _
DRAFT PROPOSED DECISION
AND
AMENDMENT TO PARAMETERS AND GUIDELINES

Education Code Sections 60850 and 60851
Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539)
California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209,
1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25, effective
July 20, 2001 and Register 03, No. 18, effective May 1, 2003¹

High School Exit Examination (00-TC-06)

As Alleged to be Modified by:

Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

17-MR-01

Department of Finance, Requester

EXECUTIVE SUMMARY

¹ The captions for the Test Claim Decision and Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 included Education Code sections 60853 and 60855 and Sections “1200-1225” of the Title 5 regulations, all of which implement the California High School Exit Examination. However, sections 60853 and 60855 were denied by the Commission as not imposing any state-mandated duties on school districts and thus should not have been included in the caption for the Parameters and Guidelines. (Test Claim Statement of Decision, pages 12, 15, 32.) In addition, the Parameters and Guidelines identify only the following regulations as imposing reimbursable state-mandated activities: California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220. (Test Claim Statement of Decision, pages 43-47, 48; Exhibit C, Parameters and Guidelines, pages 3-7.) The Parameters and Guidelines, however, mistakenly omit a citation to section 1225 of the Title 5 regulations. As determined in the Test Claim Decision, section 1225 of the Title 5 regulations mandated the district superintendent to certify the accuracy of information regarding the number of exams for each test cycle to the California Department of Education (CDE) within a specified time. (Test Claim Statement of Decision, pages 36, 48.) The Commission approved the activity mandated by section 1225 as a reimbursable state-mandated activity, and CDE did not later amend or move that activity to another regulation. (Test Claim Statement of Decision, page 48.) Although that activity is correctly included in the Parameters and Guidelines, the activity is followed by an incorrect citation to section 1207. Therefore, the caption to this Mandate Redetermination includes all regulations mandating the activities approved by the Commission for reimbursement.

I. Summary of the Mandate

This Proposed Decision and Amendment to Parameters and Guidelines is consistent with the Commission on State Mandates' (Commission's) new Test Claim Decision, adopted September 27, 2019, finding that the state's liability pursuant to article XIII B, section 6 and Government Code Section 17514 has been modified based on the subsequent change in law.²

On June 28, 2018, the Department of Finance (Finance) filed the Request for Mandate Redetermination of *High School Exit Examination*, 00-TC-06, asserting that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, constitute a subsequent change in law that modifies the state's liability for the program pursuant to Government Code section 17570. Statutes 2015, chapter 572, section 2, effective January 1, 2016, added sections 60851.5 and 60851.6 to the Education Code. Section 60851.5 suspended the administration of the HSEE, and the requirement that grade 12 pupils pass it in order to graduate, for the 2015-16, 2016-17, and 2017-18 school years. Section 60851.6 required the granting of "a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination."

Statutes 2017, chapter 641, effective January 1, 2018, repealed Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, commencing with section 60850 and including sections 60851, 60853, and 60855, all pertaining to the HSEE. And, after the Request for Mandate Redetermination was filed, the State Board of Education repealed California Code of Regulations, title 5, sections 1200-1225, many of which pertained to the HSEE.³

On September 27, 2019, the Commission approved the Request for Mandate Redetermination and adopted the new Test Claim Decision pursuant to Government Code section 17570, concluding that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, constitute a subsequent change in law that modifies the state's liability for this program. Specifically, the Commission found that Statutes 2015, chapter 572, effective January 1, 2016, suspended administration of the high school exit exam (HSEE, or CAHSEE) and the requirement that each pupil completing grade 12 successfully pass the HSEE in order to receive a diploma of graduation or to graduate from high school for the 2015-2016, 2016-2017, and 2017-2018 school years.

The Commission further found that Statutes 2017, chapter 641, effective January 1, 2018, then expressly repealed the statutes that impose the mandate. The approved activities in *High School Exit Examination*, 00-TC-06 were imposed entirely and only by these statutes and the regulations adopted to implement them. Although the implementing regulations were not amended when the program was suspended and had not yet been repealed when the request for

² If the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission shall adopt new parameters and guidelines or amend existing parameters and guidelines or reasonable reimbursement methodology pursuant to Government Code Sections 17557, 17557.1, and 17557.2.

³ California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.)

mandate redetermination was filed, it is established law that “. . . no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”⁴ Thus, the regulations must be interpreted consistent with the statutes from which their authority and reference is derived. The regulations were repealed effective February 19, 2019.⁵

Government Code section 17570(f) expressly states that “[a] request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for . . . loss of reimbursement for that fiscal year.”⁶ This Request for Mandate Redetermination was filed June 28, 2018, establishing a loss of reimbursement beginning July 1, 2016.

Accordingly, the Commission concluded that the *High School Exit Examination*, 00-TC-06 program is no longer eligible for reimbursement, pursuant to Government Code section 17570(f), beginning July 1, 2016.

- A. 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, 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)). Reimbursement is provided for notices delivered by the student or by U.S. Mail.
- B. 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.) Documentation may include a written copy of the notice or a record of mailing the notice.
- C. 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 (Cal. Code Regs., tit. 5, § 1217.)
- D. 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).).

A teacher’s time administering the HSEE during the school day is not reimbursable for any of the following activities. Administration is limited to the following activities specified in the regulations:

⁴ Government Code, section 11342.2.

⁵ Register 2019, No. 8.

⁶ See also, section 1190.1(f) of the Commission’s regulations.

1. Training a test examiner either by a test site or district coordinator as provided in the test publisher's manual (Cal. Code Regs., tit. 5, §§ 1200, subd. (g) and 1210, subd. (c)(3)).
2. 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 Individual Education Program (IEP) (§ 1215, subd. (a)(1)).
3. Accurately identifying eligible pupils who take the HSEE by school personnel at the test site through the use of photo-identification, positive recognition by the test examiner, or some equivalent means of identification. (Cal. Code Regs., tit. 5, § 1203.)
4. 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. (Cal. Code Regs., tit. 5, § 1205.)
5. 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. (Cal. Code Regs., tit. 5, § 1206.)
6. 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. (Cal. Code Regs., tit. 5, § 1209.)
7. 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. (Cal. Code Regs., tit. 5, § 1209.)
8. 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. (Cal. Code Regs., tit. 5, § 1210.)
9. The HSEE district coordinator's duties listed in section 1209 and referenced below.

District Coordinator 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 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, (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 required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

10. The HSEE test site coordinator's duties listed in section 1210 and referenced below. This individual is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE.

Test site coordinator's duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test examiner(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 examiners 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 examiner(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 1205, 1206 and 1207 of the title 5 regulations; (12) within three (3) 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. 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 examiner.

11. Delivery of HSEE booklets to the school test site no more than two working days before the test is to be administered. (Cal. Code Regs., tit. 5, § 1212.) **This activity was repealed on May 19, 2004, therefore this activity is not reimbursable after May 18, 2004.**

E. Test security/cheating: Doing the following to maintain security:

1. 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 (§ 1210, subd. (c)(7)(B)).
2. Limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (a)).
3. Having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (b) of section 1211.5 of the title 5 regulations. (Cal. Code Regs., tit. 5, § 1210, subd. (c)(5).)
4. 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. (Cal. Code Regs., tit. 5, § 1210 (c)(5), § 1211, subd. (a), § 1211.5 (b)(4).)
5. 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 (Cal. Code Regs., tit. 5, § 1210, subd. (c)(7)(A)).
6. For persons with access to the HSEE (including test site coordinators and [sic] testexaminers) to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit set forth in subdivision (g). (Cal. Code Regs., tit. 5, § 1211.5, subd. (c).)
7. HSEE district and test site coordinators control of inventory and use of appropriate inventory control forms to monitor and track test inventory. (Cal. Code Regs., tit. 5, § 1211 subd. (b).)
8. 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. (Cal. Code Regs., tit. 5, § 1211, subd. (c).)
9. Providing secure transportation within the district for test materials once they have been delivered to the district. (Cal. Code Regs., tit. 5, § 1211, subd. (d).)
10. Not scoring the test 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. (Cal. Code Regs., tit. 5, § 1220.)

- F. Reporting data to the SPI:** Providing HSEE data to the SPI or independent evaluators or the publisher is reimbursable. 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 (§ 1207).

The regulation (§1207) was amended in May 2004 and August 2005 to add the following data that must be submitted to the state (which are not reimbursable under these parameters and guidelines): (1) pupil's full name; (2) date of English proficiency reclassification; (3) if R-FEP pupil scored proficient or above on the California English-Language Arts Standards Test three (3) times since reclassification; (4) use of modifications during the exam [accommodations are reimbursed]; (5) participation in California Alternate Performance Assessment (CAPA); (6) school and district CBEDS enrollment; (7) district and county of residence for students with disabilities; (8) California School Information Services (CSIS) Student Number, once assigned.⁷

II. Procedural History

On July 26, 2019, the Commission adopted the first hearing Decision⁸ on this Mandate Redetermination, finding that finding an adequate showing had been made, and directed staff to proceed to the second hearing. On July 26, 2019, Commission staff issued the Draft Proposed Decision for the second hearing and the Draft Expedited Amendment to Parameters and Guidelines.⁹ On August 15, 2019, the State Controller's Office (Controller) filed comments on the Draft Expedited Amendment to Parameters and Guidelines recommending no changes.¹⁰ On August 19, 2019, Commission staff issued the Draft Proposed Decision and Amendment to Parameters and Guidelines.¹¹ On September 27, 2019, the Commission adopted the Proposed Decision for the second hearing as its new Test Claim Decision.

⁷ Exhibit C, Parameters and Guidelines, adopted April 26, 2006.

⁸ Exhibit D, Decision, First Hearing.

⁹ Exhibit A, Draft Proposed Decision, Second Hearing; Exhibit B, Draft Expedited Amendment to Parameters and Guidelines.

¹⁰ Exhibit F, Controller's Comments on the Draft Expedited Amendment to Parameters and Guidelines.

¹¹ Exhibit E, Draft Proposed Decision and Amendment to Parameters and Guidelines.

III. Discussion

The Proposed Decision and Amendment to Parameters and Guidelines ends reimbursement beginning July 1, 2016, for all reimbursable activities that relate to the HSEE.

IV. Staff Recommendation

Staff recommends that the Commission adopt this Proposed Decision and Amendment to Parameters and Guidelines, ending reimbursement for the activities related to the HSEE beginning July 1, 2016, in accordance to article XIII B, section 6(a) of California Constitution and Government Code section 17514.

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the Proposed Decision and Amendment to Parameters and Guidelines following the hearing.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE PARAMETERS AND GUIDELINES
AMENDMENT FOR:

Education Code Sections 60850, 60851, Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539)

California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, Register 01, No. 25, effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003¹²

As Modified by: Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

Filed on June 28, 2018

By the Department of Finance, Requester

Case No.: 00-TC-06 (17-MR-01)

High School Exit Examination

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

(Adopted September 27, 2019)

¹² The captions for the Test Claim Decision and Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 included Education Code sections 60853 and 60855 and Sections “1200-1225” of the Title 5 regulations, all of which implement the California High School Exit Examination. However, sections 60853 and 60855 were denied by the Commission as not imposing any state-mandated duties on school districts and thus should not have been included in the caption for the Parameters and Guidelines. (Test Claim Statement of Decision, pages 12, 15, 32.) In addition, the Parameters and Guidelines identify only the following regulations as imposing reimbursable state-mandated activities: California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220. (Test Claim Statement of Decision, pages 43-47, 48; Exhibit C, Parameters and Guidelines, pages 3-7.) The Parameters and Guidelines, however, mistakenly omit a citation to section 1225 of the Title 5 regulations. As determined in the Test Claim Decision, section 1225 of the Title 5 regulations mandated the district superintendent to certify the accuracy of information regarding the number of exams for each test cycle to CDE within a specified time. (Test Claim Statement of Decision, pages 36, 48.) The Commission approved the activity mandated by section 1225 as a reimbursable state-mandated activity, and the California Department of Education (CDE) did not later amend or move that activity to another regulation. (Test Claim Statement of Decision, page 48.) Although that activity is correctly included in the Parameters and Guidelines, the activity is followed by an incorrect citation to section 1207. Therefore, the caption to this Mandate Redetermination includes all regulations mandating the activities approved by the Commission for reimbursement.

DECISION

The Commission on State Mandates (Commission) heard and decided this Proposed Decision and Amendment to Parameters and Guidelines during a regularly scheduled hearing on September 27, 2019. [Witness list will be included in the adopted decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1190 et seq., and related case law.

The Commission [adopted/modified] the Proposed Decision and Amendment to Parameters and Guidelines by a vote of [vote count will be included in the adopted decision], as follows:

Member	Vote
Lee Adams, County Supervisor	
Mark Hariri, Representative of the State Treasurer	
Jeannie Lee, Representative of the Director of the Office of Planning and Research	
Gayle Miller, Representative of the Director of the Department of Finance, Chairperson	
Sarah Olsen, Public Member	
Carmen Ramirez, City Council Member	
Jacqueline Wong-Hernandez, Representative of the State Controller, Vice Chairperson	

I. Summary of the Mandate

This Proposed Decision and Amendment to Parameters and Guidelines is consistent with the Commission’s new Test Claim Decision adopted September 27, 2019, finding that the state’s liability pursuant to article XIII B, section 6(a) of the California Constitution for the *High School Exit Examination*, 00-TC-06 program was modified based upon a subsequent change in law.¹³ Specifically, Statutes 2015, chapter 572, effective January 1, 2016, suspended administration of the high school exit exam (HSEE, or CAHSEE) for the 2015-2016, 2016-2017, and 2017-2018 school years, and also suspended the requirement that each pupil completing grade 12 in said years successfully pass the HSEE in order to receive a diploma of graduation or to graduate from high school. Statutes 2017, chapter 641, effective January 1, 2018, then expressly repealed the statutes that impose the mandate. Although the implementing regulations were not repealed at the time the Department of Finance (Finance) filed the Request for Mandate Redetermination and so were not pled, it is established law that “. . . no regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.”¹⁴ Thus, the regulations must be interpreted consistent with the statutes

¹³ Pursuant to Government Code section 17570(i), “[i]f the Commission adopts a new test claim decision that supersedes the previously adopted test claim decision, the Commission shall adopt new parameters and guidelines or amend existing parameters and guidelines or reasonable reimbursement methodology pursuant to sections 17557, 17557.1, and 17557.2.”

¹⁴ Government Code, section 11342.2.

from which their authority and reference is derived. Therefore, the implementing regulations lack the force of law effective January 1, 2018. Additionally, after the Request for Mandate Redetermination was filed, California Code of Regulations, title 5, sections 1200-1225, which encompasses the test claim regulations, 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, as added by Register 01, No. 25 and Register 03, No. 18, were repealed effective February 19, 2019, in accordance with the repeal of the test claim statutes.¹⁵

Therefore, the following activities do not impose costs mandated by the state within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, and are no longer eligible for reimbursement, pursuant to Government Code section 17570(f), beginning July 1, 2016:

- A. 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, 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)). Reimbursement is provided for notices delivered by the student or by U.S. Mail.
- B. 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.) Documentation may include a written copy of the notice or a record of mailing the notice.
- C. Determining English language skills:** Determining whether English-learning pupils¹⁶ possess sufficient English language skills at the time of the HSEE to be assessed¹⁷ with the HSEE (Cal. Code Regs., tit. 5, § 1217.)
- D. 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)).

A teacher's time administering the HSEE during the school day is not reimbursable for any of the following activities. Administration is limited to the following activities specified in the regulations:

¹⁵ California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.)

¹⁶ As defined in Education Code section 435, subdivision (a).

¹⁷ Criteria are identified in Education Code section 313.

1. Training a test examiner either by a test site or district coordinator as provided in the test publisher's manual (Cal. Code Regs., tit. 5, §§ 1200, subd. (g) and 1210, subd. (c)(3)).
2. 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 Individual Education Program (IEP) (§ 1215, subd. (a)(1)).
3. Accurately identifying eligible pupils who take the HSEE by school personnel at the test site through the use of photo-identification, positive recognition by the test examiner, or some equivalent means of identification. (Cal. Code Regs., tit. 5, § 1203.)
4. 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. (Cal. Code Regs., tit. 5, § 1205.)
5. 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. (Cal. Code Regs., tit. 5, § 1206.)
6. 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. (Cal. Code Regs., tit. 5, § 1209.)
7. 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. (Cal. Code Regs., tit. 5, § 1209.)
8. 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. (Cal. Code Regs., tit. 5, § 1210.)
9. The HSEE district coordinator's duties listed in section 1209 and referenced below.

District Coordinator 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 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, (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 required, and returned all test materials, answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

10. The HSEE test site coordinator's duties listed in section 1210 and referenced below. This individual is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE.

Test site coordinator's duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test examiner(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 examiners 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 examiner(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 1205, 1206 and 1207 of the title 5 regulations; (12) within three (3) 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. 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 examiner.

11. Delivery of HSEE booklets to the school test site no more than two working days before the test is to be administered. (Cal. Code Regs., tit. 5, § 1212.) **This activity was repealed on May 19, 2004, therefore this activity is not reimbursable after May 18, 2004.**

E. Test security/cheating: Doing the following to maintain security:

1. 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 (§ 1210, subd. (c)(7)(B)).
2. Limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (a)).
3. Having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (b) of section 1211.5 of the title 5 regulations. (Cal. Code Regs., tit. 5, § 1210, subd. (c)(5).)
4. 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. (Cal. Code Regs., tit. 5, § 1210 (c)(5), § 1211, subd. (a), § 1211.5 (b)(4).)
5. 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 (Cal. Code Regs., tit. 5, § 1210, subd. (c)(7)(A)).
6. For persons with access to the HSEE (including test site coordinators and [sic] testexaminers) to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit set forth in subdivision (g). (Cal. Code Regs., tit. 5, § 1211.5, subd. (c).)
7. HSEE district and test site coordinators control of inventory and use of appropriate inventory control forms to monitor and track test inventory. (Cal. Code Regs., tit. 5, § 1211 subd. (b).)
8. 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. (Cal. Code Regs., tit. 5, § 1211, subd. (c).)
9. Providing secure transportation within the district for test materials once they have been delivered to the district. (Cal. Code Regs., tit. 5, § 1211, subd. (d).)
10. Not scoring the test 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. (Cal. Code Regs., tit. 5, § 1220.)

- F. Reporting data to the SPI:** Providing HSEE data to the SPI or independent evaluators or the publisher is reimbursable. 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 (§ 1207).

The regulation (§1207) was amended in May 2004 and August 2005 to add the following data that must be submitted to the state (which are not reimbursable under these parameters and guidelines): (1) pupil's full name; (2) date of English proficiency reclassification; (3) if R-FEP pupil scored proficient or above on the California English-Language Arts Standards Test three (3) times since reclassification; (4) use of modifications during the exam [accommodations are reimbursed]; (5) participation in California Alternate Performance Assessment (CAPA); (6) school and district CBEDS enrollment; (7) district and county of residence for students with disabilities; (8) California School Information Services (CSIS) Student Number, once assigned.¹⁸

II. Procedural History

On July 26, 2019, the Commission adopted the Decision at the first hearing on the Request for Mandate Redetermination, finding an adequate showing had been made, and directed staff to proceed to the second hearing.¹⁹ On July 26, 2016, Commission staff issued the Draft Proposed Decision for the second hearing and the Draft Expedited Amendment to Parameters and Guidelines.²⁰ On August 15, 2019, the Controller filed comments on the Draft Expedited Amendment to Parameters and Guidelines recommending no changes.²¹ On August 19, 2019, Commission staff issued the Draft Proposed Decision and Amendment to Parameters and Guidelines.²² On September 27, 2019, the Commission adopted the Proposed Decision for the second hearing as its new Test Claim Decision.

¹⁸ Exhibit C, Parameters and Guidelines, adopted April 26, 2006.

¹⁹ Exhibit D, Decision, First Hearing.

²⁰ Exhibit A, Draft Proposed Decision, Second Hearing; and Exhibit B, Draft Expedited Amendment to Parameters and Guidelines.

²¹ Exhibit F, Controller's Comments on the Draft Expedited Amendment to Parameters and Guidelines.

²² Exhibit E, Draft Proposed Decision and Amendment to Parameters and Guidelines.

III. Discussion

The Proposed Decision and Amendment to Parameters and Guidelines ends reimbursement beginning July 1, 2016, for the reimbursable activities that relate to the HSEE.

The Commission further finds the Proposed Decision and Amendment to Parameters and Guidelines is supported by the findings adopted by the Commission in its new Test Claim Decision for the *High School Exit Examination*, 00-TC-06 program on September 27, 2019.

IV. Conclusion

Based on the foregoing, the Commission hereby adopts the Proposed Decision and Amendment to Parameters and Guidelines.

Amended: September 27, 2019

Adopted: April 26, 2006

J:\MANDATES\2000\00-TC-06 (HS Exit Exam)\17-MR-01\New TC Decision\Draft Proposed PGA.docx

DRAFT PROPOSED AMENDMENT TO **PARAMETERS AND GUIDELINES**

Education Code Sections 60850 and 60851
Statutes 1999x, Chapter 1 (SB 2) and Statutes 1999, Chapter 135 (AB 2539)
California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209,
1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225, Register 01, No. 25, effective
July 20, 2001 and Register 03, No. 18, effective May 1, 2003¹

High School Exit Examination (00-TC-06)

As Modified by:

Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

17-MR-01

Reimbursement for this Program Ends July 1, 2016

I. SUMMARY OF THE MANDATE

On March 25, 2004, the Commission on State Mandates (Commission) adopted the Statement of Decision for the *High School Exit Examination* (00-TC-06) program. The Commission found that Education Code sections 60850, 60851, 60853, and 60855 as added in 1999 along with

¹ The captions for the Test Claim Decision and Parameters and Guidelines for *High School Exit Examination*, 00-TC-06 included Education Code sections 60853 and 60855 and Sections “1200-1225” of the Title 5 regulations, all of which implement the California High School Exit Examination. However, sections 60853 and 60855 were denied by the Commission as not imposing any state-mandated duties on school districts and thus should not have been included in the caption for the Parameters and Guidelines. (Test Claim Statement of Decision, pages 12, 15, 32.) In addition, the Parameters and Guidelines identify only the following regulations as imposing reimbursable state-mandated activities: California Code of Regulations, title 5, sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, and 1220. (Test Claim Statement of Decision, pages 43-47, 48; Exhibit C, Parameters and Guidelines, pages 3-7.) The Parameters and Guidelines, however, mistakenly omit a citation to section 1225 of the Title 5 regulations. As determined in the Test Claim Decision, section 1225 of the Title 5 regulations mandated the district superintendent to certify the accuracy of information regarding the number of exams for each test cycle to the California Department of Education (CDE) within a specified time. (Test Claim Statement of Decision, pages 36, 48.) The Commission approved the activity mandated by section 1225 as a reimbursable state-mandated activity, and CDE did not later amend or move that activity to another regulation. (Test Claim Statement of Decision, page 48.) Although that activity is correctly included in the Parameters and Guidelines, the activity is followed by an incorrect citation to section 1207. Therefore, the caption to this Mandate Redetermination includes all regulations mandating the activities approved by the Commission for reimbursement.

California Code of Regulations, Title 5, sections 1200-1225 that became effective in 2001 and 2003 constitute a new program or higher level of service and impose a reimbursable state-mandated program upon school districts within the meaning of article XIII B, section 6, of the California Constitution and Government Code section 17514. The regulations were amended in May 2004 and August 2005 to add additional activities which were not included in the test claim decision and are not reimbursable under these parameters and guidelines. The Commission approved this test claim for the following reimbursable 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 High School Exit Exam (HSEE).

Documentation of adequate notice: maintaining documentation that the parent or guardian of each pupil received written notification of the HSEE.

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.

HSEE administration: administration of the HSEE, on designated dates to specified pupils, excluding a teacher's time administering the HSEE.

Test security/cheating: maintaining test security.

Reporting data to the Superintendent of Public Instruction (SPI): providing specific HSEE data on each pupil to the SPI or independent evaluators or the publisher.

The Commission denied any remaining alleged costs or activities, as identified on Attachment A, because they do not impose a new program or higher level of service, and do not impose costs mandated by the state.

Effective January 1, 2016, Statutes 2015, chapter 572, added sections 60851.5 and 60851.6 to the Education Code. Section 60851.5 suspended the administration of the HSEE, and the requirement that grade 12 pupils pass it in order to graduate, for the 2015-16, 2016-17, and 2017-18 school years. Section 60851.6 required the granting of "a diploma of graduation from high school to any pupil who completed grade 12 in the 2003–04 school year or a subsequent school year and has met all applicable graduation requirements other than the passage of the high school exit examination."

Effective January 1, 2018, Statutes 2017, chapter 641, repealed Chapter 9 of Part 33 of Division 4 of Title 2 of the Education Code, commencing with section 60850 and including sections 60851, 60853, and 60855, all pertaining to the HSEE.

Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220, and 1225 of title 5 of the California Code of Regulations were repealed effective February 19, 2019.²

On June 28, 2018, the Department of Finance (Finance) filed the Request for Redetermination of the High School Exit Examination, 00-TC-06 Test Claim. On September 27, 2019, the

² California Code of Regulations, title 5, sections 1200-1225 were repealed effective February 19, 2019, pursuant to California Code of Regulations, title 1, section 100. (Register 2019, No. 8.)

Commission adopted a new Test Claim decision, finding that Statutes 2015, chapter 572, and Statutes 2017, chapter 641, constitute a subsequent change in law that eliminates the state's liability for reimbursement under the previously adopted Test Claim Decision, beginning July 1, 2016.

II. ELIGIBLE CLAIMANTS

Any "school district" as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a direct result of this reimbursable state-mandated program is eligible to claim reimbursement of those costs. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17570(f) provides that "[a] request for adoption of a new test claim decision shall be filed on or before June 30 following a fiscal year in order to establish eligibility for reimbursement or loss of reimbursement for that fiscal year." The Request for Mandate Redetermination was filed on June 28, 2018 and therefore reimbursement ends beginning July 1, 2016.~~Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. The test claim for this mandate was filed on January 25, 2001. Therefore, the costs incurred for compliance with Statutes of 1999x, Chapter 1 and Statutes of 1999, Chapter 135 are eligible for reimbursement on or after July 1, 2000.~~

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(2), all claims for reimbursement of initial fiscal year costs shall be submitted to the State Controller within 120 days of the issuance date for the claiming instructions.

If the total costs for a given fiscal year do not exceed \$1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for the reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

- A. 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, 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)). Reimbursement is provided for notices delivered by the student or by U.S. Mail.
- B. 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.) Documentation may include a written copy of the notice or a record of mailing the notice.
- C. Determining English language skills:** Determining whether English-learning pupils³ possess sufficient English language skills at the time of the HSEE to be assessed⁴ with the HSEE (Cal. Code Regs., tit. 5, § 1217.)
- D. 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)).

A teacher's time administering the HSEE during the school day is not reimbursable for any of the following activities. Administration is limited to the following activities specified in the regulations:

1. Training a test examiner either by a test site or district coordinator as provided in the test publisher's manual (Cal. Code Regs., tit. 5, §§ 1200, subd. (g) and 1210, subd. (c)(3)).
2. 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 Individual Education Program (IEP) (§ 1215, subd. (a)(1)).
3. Accurately identifying eligible pupils who take the HSEE by school personnel at the test site through the use of photo-identification, positive recognition by the test examiner, or some equivalent means of identification. (Cal. Code Regs., tit. 5, § 1203.)
4. 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

⁴³ As defined in Education Code section 435, subdivision (a).

²⁴ Criteria are identified in Education Code section 313.

pupil who took each section, and whether each pupil passed or did not pass the section or sections of the HSEE taken. (Cal. Code Regs., tit. 5, § 1205.)

5. 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. (Cal. Code Regs., tit. 5, § 1206.)
6. 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. (Cal. Code Regs., tit. 5, § 1209.)
7. 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. (Cal. Code Regs., tit. 5, § 1209.)
8. 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. (Cal. Code Regs., tit. 5, § 1210.)
9. The HSEE district coordinator's duties listed in section 1209 and referenced below.

District Coordinator 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 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, (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 required, and returned all test materials,

answer documents, and other materials included as part of the HSEE in the manner required by the publisher.

10. The HSEE test site coordinator's duties listed in section 1210 and referenced below. This individual is to be available to the HSEE district coordinator to resolve issues that arise as a result of administration of the HSEE.

Test site coordinator's duties are: (1) determining site examination and test material needs; (2) arranging for test administration at the site; (3) training the test examiner(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 examiners 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 examiner(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 1205, 1206 and 1207 of the title 5 regulations; (12) within three (3) 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. 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 examiner.

11. Delivery of HSEE booklets to the school test site no more than two working days before the test is to be administered. (Cal. Code Regs., tit. 5, § 1212.) **This activity was repealed on May 19, 2004, therefore this activity is not reimbursable after May 18, 2004.**

E. Test security/cheating: Doing the following to maintain security:

1. 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 (§ 1210, subd. (c)(7)(B)).
2. Limiting access to the HSEE to pupils taking it and employees responsible for its administration (§ 1211, subd. (a)).

3. Having all HSEE district and test site coordinators sign the HSEE Test Security Agreement set forth in subdivision (b) of section 1211.5 of the title 5 regulations. (Cal. Code Regs., tit. 5, § 1210, subd. (c)(5).)
4. 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. (Cal. Code Regs., tit. 5, § 1210 (c)(5), § 1211, subd. (a), § 1211.5 (b)(4).)
5. 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 (Cal. Code Regs., tit. 5, § 1210, subd. (c)(7)(A)).
6. For persons with access to the HSEE (including test site coordinators and testexaminers) to acknowledge the limited purpose of their access to the test by signing the HSEE Test Security Affidavit set forth in subdivision (g). (Cal. Code Regs., tit. 5, § 1211.5, subd. (c).)
7. HSEE district and test site coordinators control of inventory and use of appropriate inventory control forms to monitor and track test inventory. (Cal. Code Regs., tit. 5, § 1211 subd. (b).)
8. 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. (Cal. Code Regs., tit. 5, § 1211, subd. (c).)
9. Providing secure transportation within the district for test materials once they have been delivered to the district. (Cal. Code Regs., tit. 5, § 1211, subd. (d).)
10. Not scoring the test 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. (Cal. Code Regs., tit. 5, § 1220.)

F. Reporting data to the SPI: Providing HSEE data to the SPI or independent evaluators or the publisher is reimbursable. 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~~1207).

The regulation (§1207) was amended in May 2004 and August 2005 to add the following data that must be submitted to the state (which are not reimbursable under these parameters and guidelines): (1) pupil's full name; (2) date of English proficiency reclassification; (3) if R-FEP pupil scored proficient or above on the California English-Language Arts Standards Test three (3) times since reclassification; (4) use of modifications during the exam [accommodations are reimbursed]; (5) participation in California Alternate Performance Assessment (CAPA); (6) school and district CBEDS enrollment; (7) district and county of residence for students with disabilities; (8) California School Information Services (CSIS) Student Number, once assigned.

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursable claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. The following direct costs are eligible for reimbursement.

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for

purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

6. Training

Report the cost of training an employee to perform the reimbursable activities, as specified in Section IV of this document. Report the name and job classification of each employee preparing for, attending, and/or conducting training necessary to implement the reimbursable activities. Provide the title, subject, and purpose (related to the mandate of the training session), dates attended, and location. If the training encompasses subjects broader than the reimbursable activities, only the pro-rata portion can be claimed. Report employee training time for each applicable reimbursable activity according to the rules of cost element A.1, Salaries and Benefits, and A.2, Materials and Supplies. Report the cost of consultants who conduct the training according to the rules of cost element A.3, Contracted Services.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter⁵ is subject to the initiation of an audit by the State Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which

³⁵ This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed not later than two years after the date that the audit is commenced. All documentation used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate from any source, including, but not limited to, service fees collected, federal funds, and other state funds shall be identified and deducted from this claim.

Reimbursement shall be offset by funding provided in the State Budget for the HSEE Program.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (c), the Controller shall issue claiming instructions for each mandate that requires state reimbursement no later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(2), issuance of the claiming instructions shall constitute notice of the right of local agencies and schools districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (d), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

~~The Statement of Decisions on the Test Claim, Mandate Redetermination, Parameters and Guidelines, and Amendments thereto are~~ legally binding on all parties and provide the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record ~~for the test claim~~. The administrative record, ~~including the Statement of Decision~~, is on file with the Commission.

ATTACHMENT A

The Commission found that the following activities are not reimbursable. (See Statement of Decision adopted on March 25, 2004.)

1. Duties of the Superintendent of Public Instruction (Ed. Code, § 60850, subs. (a), (b), (d), (e)(2), (e)(3), (e)(4), & (h)).
2. Field testing of the HSEE (Ed. Code, § 60850, subd. (c)).
3. Providing HSEE results to all pupils.
4. Administering the HSEE to adult students.
5. Restructuring academic offerings (Ed. Code, § 60853, subs. (b)(c)).
6. Using test proctors to administer the HSEE (Cal. Code Regs, tit.5, § 1200, subd. (i)).
7. Permissive accommodations (Cal. Code Regs., tit., 5, §§ 1216, subd. (d), 1218 & 1219).
8. Federally mandated accommodations (Cal. Code Regs, tit. 5, §§ 1215.5 & 1216; Ed. Code, § 60850, subd (g).)
9. A teacher's time in administering the examination.
10. Supplemental instruction (Ed. Code, §§ 60851, subd. (f) & 60853, subd. (a)).
11. Evaluations of the HSEE by the SPI (Ed. Code, § 60855).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On August 19, 2019, I served the:

- **Draft Proposed Decision and Proposed Amendment to Parameters and Guidelines, Schedule for Comments, and Notice of Hearing issued August 19, 2019**

Second Hearing: New Test Claim Decision

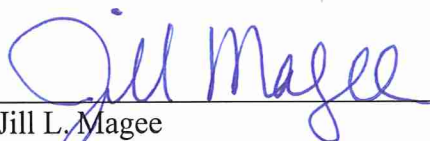
High School Exit Examination (00-TC-06), 17-MR-01

Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25, effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003; as alleged to be modified by: Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)

Department of Finance, Requester

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 19, 2019 at Sacramento, California.



Jill L. Magee
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/13/19

Claim Number: 17-MR-01

Matter: High School Exit Examination (00-TC-06)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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BETTY T. YEE
California State Controller

RECEIVED
August 15, 2019
*Commission on
State Mandates*

August 15, 2019

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

SUBJECT: Draft Expedited Amendment to Parameters and Guidelines, Schedule for Comments, and Notice of Hearing

High School Exit Examination (00-TC-06), 17-MR-01
Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25 effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003
Department of Finance, Requester

Dear Ms. Halsey:

The State Controller's Office reviewed the Draft Expedited Parameters and Guidelines for the High School Exit Examination program and recommend no changes.

If you have any questions, please contact Everett Luc of the Local Reimbursements Section in the Local Government Programs and Services Division, at ELuc@sco.ca.gov or (916) 323-0766.

Sincerely,


DEBRA MORTON, Manager
Local Reimbursements Section

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On August 15, 2019, I served the:

- **Controller’s Comments on the Draft Expedited Amendment to Parameters and Guidelines filed August 15, 2019**

Second Hearing: New Test Claim Decision
High School Exit Examination (00-TC-06), 17-MR-01
Education Code Sections 60850 and 60851; Statutes 1999x, Chapter 1, (SB 2) and Statutes 1999, Chapter 135 (AB 2539); California Code of Regulations, Title 5, Sections 1200, 1203, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1211.5, 1212, 1215, 1217, 1220 and 1225, Register 01, No. 25, effective July 20, 2001 and Register 03, No. 18, effective May 1, 2003; as alleged to be modified by: Statutes 2015, Chapter 572 (SB 172) and Statutes 2017, Chapter 641 (AB 830)
Department of Finance, Requester

by making it available on the Commission’s website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 15, 2019 at Sacramento, California.



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COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 8/13/19

Claim Number: 17-MR-01

Matter: High School Exit Examination (00-TC-06)

Requester: Department of Finance

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