

ITEM 10
TEST CLAIM
REVISED FINAL STAFF ANALYSIS

California Code of Regulations, Title 11:
Section 1082 (Register 2002, No. 35);
Sections 1001, 1052, 1053, 1055, 1070, and 1071 (Register 2001, No. 29);
Section 1056 (Register 2001, No. 4); and
Section 1058 (Register 91, No. 50)

Peace Officer Instructor Training
(02-TC-26)

San Bernardino Community College District, Claimant

EXECUTIVE SUMMARY

This item was scheduled for the April 16, 2007 Commission hearing but was continued to the May 31, 2007 hearing, after extensive comments at the March 29, 2007 hearing presented by counties on a related test claim (*Training Requirements for Instructors and Academy Staff* (02-TC-03), Item 8 on this agenda). The final staff analysis was then issued for a 30-day comment period. The following is a revised final staff analysis. The staff recommendation has not changed.

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

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

The test claim poses the following question:

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

The Test Claim Regulations Do Not Impose a Reimbursable State-Mandated Program on Community College Districts

Although some of the test claim regulations require persons who provide specified POST training to engage in certain activities, staff finds that the requirements flow from the initial discretionary decisions by the community college district to provide POST-certified training or establish a POST training academy. Therefore, the test claim regulations are not subject to article XIII B, section 6 and consequently do not constitute a state-mandated program.

Conclusion

Staff finds that because the underlying decisions to provide POST-certified training or establish a POST training academy are discretionary, the test claim regulations are not subject to article XIII B, section 6 of the California Constitution and consequently do not impose a state-mandated program on community college districts.

Recommendation

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

STAFF ANALYSIS

Claimant

San Bernardino Community College District

Chronology

06/10/03	San Bernardino Community College District (“Claimant”) filed test claim with the Commission on State Mandates (“Commission”)
11/17/03	The Chancellor’s Office of the California Community Colleges submitted comments on test claim to the Commission
03/16/04	The Chancellor’s Office of the California Community Colleges submitted additional comments on test claim to the Commission
04/19/04	San Bernardino Community College District submitted response to Chancellor’s Office comments to the Commission
12/21/06	Commission staff issued draft staff analysis
01/08/07	Claimant requested an extension of time to file comments on the draft staff analysis
02/13/07	Claimant requested a further extension of time to file comments on the draft staff analysis
03/08/07	Claimant notified the Commission via e-mail that it would be providing no further written comments on the draft staff analysis
03/29/07	Commission heard related test claim, <i>Training Requirements for Instructors and Academy Staff</i> (02-TC-03), and postponed both test claims to May 31, 2007 hearing
04/02/07	Commission staff issued final staff analysis for 30-day comment period
04/17/07	Commission staff issued excerpts from the March 29, 2007 hearing on a similar test claim
05/17/07	Commission staff issued revised final staff analysis

Background

This test claim addresses POST regulations¹ that require training of specified POST instructors and key staff of POST training academies.

POST was established by the Legislature in 1959 to set minimum selection and training standards for California law enforcement.² POST is authorized to adopt regulations as necessary to carry out the purposes of the statutes that established it.³ The POST program is funded primarily by persons who violate the laws that peace officers are trained to enforce.⁴

¹ California Code of Regulations, title 11.

² Penal Code section 13500 et seq.

³ Penal Code section 13506.

Participating agencies agree to abide by the standards established by POST and may apply to POST for state aid.⁵

Among other things, POST has the power to “develop and implement programs to increase the effectiveness of law enforcement and when such programs involve training and education courses to cooperate with and secure the cooperation of state-level officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs.”⁶ POST training is provided to law enforcement officers by POST-approved institutions or agencies, and POST can certify training courses and curriculum developed by other entities as meeting required minimum standards.⁷ POST states the following:

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and technology, quality leadership training programs, and professional certificates to recognize peace officer achievement.⁸

A POST participating agency can offer its own in-house POST-certified training, or send its personnel to POST-certified training institutions operated by other entities, such as community colleges or other law enforcement agencies.⁹

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

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

⁴ *About California POST*, <<http://www.POST.ca.gov>>.

⁵ Penal Code sections 13522 and 13523.

⁶ Penal Code section 13503, subdivision (e).

⁷ Penal Code sections 13510, 13510.1, 13510.5, and 13511; California Code of Regulations, Title 11, section 1053.

⁸ POST Website, *Training, Certificates & Services: Overview*, <<http://www.POST.ca.gov>>.

⁹ Letter from POST to the Commission, dated October 30, 2002.

POST subsequently adopted the regulations proposed in Bulletin number 01-05, which constitute a portion of this test claim. These training regulations require that, effective July 1, 2002, primary instructors¹⁰ of designated specialized training courses complete a specified training standard, or its equivalent, prior to instructing in the specialized subject.¹¹ Instructors of specialized training that are not primary instructors must complete the specified training standard, or its equivalent, if they are appointed on or after July 1, 2002, or if they instruct at a new training institution on or after July 1, 2002.¹² A process was also established to allow presenters of the specialized courses to perform an equivalency evaluation of non-POST-certified training to meet the minimum training standard for the specialized subject.¹³ Presenters of the specialized courses are required to maintain documentation demonstrating satisfaction of the minimum training standard by their instructors who teach any of the specialized courses.¹⁴

The test claim regulations also require that Academy Directors, Academy Coordinators, and Academy Recruit Training Officers who are appointed to those positions on or after July 1, 2002, shall complete specified minimum training standards within one year from the date of appointment to the position.¹⁵ Academy Directors are required to maintain documentation demonstrating satisfaction of the minimum training standard for the designated staff position.¹⁶

Three additional requirements are set forth in these regulations with regard to specialized course instructors and Academy instructors. First, qualifications of certain academy staff, in addition to other instructors and coordinators, must now be evaluated by POST in requests for course certification.¹⁷ Second, specified elements of instructor resumes must now be provided for course certification requests.¹⁸ And third, certificates of completion must be issued by presenters to students who successfully complete POST-certified instructor development courses listed in section 1070, the Academy Director/Coordinator Workshop and the Recruit Training Officer Workshop.¹⁹

¹⁰ “Primary instructor” is an individual responsible for the coordination and instruction for a particular topic. The responsibility includes oversight of topic content, logistics, and other instructors. (Cal. Code Regs., tit. 11, § 1001, subd. (aa).)

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

¹² *Ibid.*

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

¹⁴ California Code of Regulations, Title 11, section 1070, subdivision (c).

¹⁵ California Code of Regulations, Title 11, section 1071, subdivision (a). Content for the courses for each staff position is specified in section 1082.

¹⁶ California Code of Regulations, Title 11, section 1071, subdivision (b).

¹⁷ California Code of Regulations, Title 11, section 1052, subdivision (a)(2).

¹⁸ California Code of Regulations, Title 11, section 1053, subdivision (a)(2).

¹⁹ California Code of Regulations, Title 11, section 1055, subdivision (l).

Claimant's Position

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

Claimant asserts that new duties mandated by the state upon community college districts require state reimbursement of the direct and indirect costs of labor, materials and supplies, data processing services and software, contracted services and consultants, equipment and capital assets, staff and student training and travel to implement the following activities:

1. Establish and implement policies and procedures, and to revise those policies and procedures from time to time, to provide for the certification of courses and personnel by POST. (Cal. Code Regs., tit. 11, §§ 1001 and 1052 through 1082.)
2. Request course certifications which set forth:
 - a. course content and hours;
 - b. qualification of instructors, coordinators and academy staff;
 - c. physical facilities appropriate for the training;
 - d. cost of the course;
 - e. potential clientele and volume of trainees;
 - f. need and justification for the course;
 - g. methods of course presentation;
 - h. availability of staff to administer the course;
 - i. course evaluation process;
 - j. instructor to trainee ratios; and
 - k. provisions for student safety.

(Cal. Code Regs., tit. 11, §§ 1052, subd. (a).)

3. When requesting course certifications:
 - a. designating an academy director whose qualifications include a demonstrated ability to manage an academy;
 - b. designating an academy coordinator whose qualifications include a demonstrated ability to coordinate the instruction and management of the Regular Basic Course instructional system;
 - c. insuring that the academy shall be supervised at all times by an academy director or coordinator when instruction is being conducted;
 - d. insuring that an advisory committee of law enforcement officials has been instituted to assist in providing logistical support and validation of the training; and

- e. insuring that the college district complies with the minimum training standards for directors, coordinators, and recruit training officers.

(Cal. Code Regs., tit. 11, § 1052, subd. (b).)

- 4. When requesting course certifications after July 1, 2002:
 - a. first telephonically contacting a POST Training Delivery Consultant for an evaluation;
 - b. for favorable telephonic evaluations, submitting a complete course certification request package which shall include:
 - 1. Course Certification Request form;
 - 2. instructor resumes;
 - 3. course budget if the proposed course will require tuition;
 - 4. an expanded course outline including subject topics to the third level of detail;
 - 5. an hourly distribution schedule indicating, by day of the week, the instructors and topics scheduled for each course hour; and
 - 6. student safety policies and procedures for courses that include manipulative skills training.

(Cal. Code Regs., tit. 11, § 1053.)

- 5. Renew courses annually by fiscal year. (Cal. Code Regs., tit. 11, § 1055, subd. (a).)
- 6. Display POST certification numbers on all materials being publicized, using the exact title as certified, and clearly indicating on all course announcements, brochures, bulletins or publications that POST has certified the individual course. (Cal. Code Regs., tit. 11, § 1055, subd. (c).)
- 7. Prior to change or modification of any course or budget, request POST approval and report any changes in subventions from outside sources within 30 days of the change. (Cal. Code Regs., tit. 11, § 1055, subd. (d).)
- 8. At least 30 calendar days prior to presentation of any course, submit to POST a course announcement with an attached hourly distribution schedule, and use the course control number issued by POST upon approval when referencing a particular course. (Cal. Code Regs., tit. 11, § 1055, subd. (e).)
- 9. Contact POST for approval of any necessary changes related to the presentation of a course, such as dates, times, location or hours. (Cal. Code Regs., tit. 11, § 1055, subd. (h).)
- 10. Complete and submit to POST a Course Certification Report of each certified course prior to the beginning of a new fiscal year to ensure certification for the following fiscal year, including an evaluation of the continuing need for the course, currency of curriculum, and adherence to course requirements, which has been reviewed and signed by the presenter or designee. (Cal. Code Regs., tit. 11, § 1056.)

11. When appropriate, appeal a certification or decertification decision to the POST Executive Director and the POST Commission itself as follows:
 - a. file written appeal to Executive Director, along with all supporting documentation, within 30 days of the certification or decertification notice;
 - b. file written appeal to Commission itself, along with all supporting documentation, within 30 days of the date of the Executive Director's decision; and
 - c. appear at POST Commission hearing and present evidence when necessary or appropriate.

(Cal. Code Regs., tit. 11, § 1058.)

12. Effective July 1, 2002, ensure that the district's primary instructors of specified courses complete the required training standards. Ensure that instructors appointed on or after July 1, 2002, or who instruct at a new institution after July 1, 2002, complete the specified training standards. (Cal. Code Regs., tit. 11, § 1070, subd. (a).)
13. Maintain documentation which demonstrates satisfaction of the minimum training standards of instructors, which shall be a copy of the certificate of course completion issued by the training presenter, or a POST training record, or the expanded course outline used for training equivalence. (Cal. Code Regs., tit. 11, § 1070, subd. (c).)
14. Effective July 1, 2002, ensure that the district's academy directors, academy coordinators and academy recruit training officers complete the training standards specified for the position. (Cal. Code Regs., tit. 11, § 1071, subd. (a).)
15. As Academy Director, maintain documentation demonstrating satisfaction of the minimum training standards for each staff position. (Cal. Code Regs., tit. 11, § 1071, subd. (b).)
16. Ensure POST-certified courses presented by community college meet specified minimum content requirements, assess student proficiency in each topic area, and ensure assessment is consistent with learning objectives. (Cal. Code Regs., tit. 11, § 1082, subd. (a).)

Claimant states that the District will incur approximately a minimum of \$1,000 annually in staffing for certifying POST courses and training POST instructors, and "other costs in excess of fees and subventions provided to community college districts from July 1, 2001 through June 30, 2002 to implement these new duties mandated by the state which the district has not been reimbursed by any federal, state, or local government agency, and for which it cannot otherwise obtain reimbursement."²⁰

Claimant also filed comments on April 19, 2004, in response to the California Community Colleges Chancellor's Office comments, which were submitted on November 17, 2003. These comments are addressed, as necessary, in the following analysis. On March 8, 2007, claimant

²⁰ Test Claim, Declaration of Gloria Fischer, Dean, Police Science Program, San Bernardino Community College District, pages 7-8.

notified the Commission that it would be providing no further written comments on the draft staff analysis.

Position of the California Community Colleges Chancellor's Office

The Chancellor's Office argues that the test claim regulations do not impose a reimbursable state-mandated program on community college districts, since there is no legal compulsion, pursuant to *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, for the districts to offer POST courses and thus incur the attendant costs. The Chancellor's Office recognizes that the new regulatory requirements may make the POST courses more expensive to operate than other courses, but further notes that, "it is a fact of academic life that some courses cost more than others," and "[c]olleges need not offer courses that they decide they cannot afford."²¹ And the fact that the claimant has discretion to offer these courses "underscores the absence of a mandate to do so and defeats the [test] [c]laim."²²

The Chancellor's Office also points out that, pursuant to Education Code section 76300, community colleges are generally required to charge enrollment fees for their credit courses, and claimant's website indicates that its POST training courses are offered as credit courses. As a result, students should be paying enrollment fees, and possibly nonresident tuition if they are not California residents. In addition, the District is authorized to submit attendance in credit classes for state apportionment or aid.

Government Code section 17556, subdivision (d), provides that no mandated costs will be found where the district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service. The Chancellor's Office maintains that section 17556, subdivision (d), prohibits approval of the claim because claimant offers no evidence that authorized fees cannot be used to meet any expenses it might incur under the test claim regulations.

Furthermore, the test claim regulations do not impose a new program or increased level of service, because the California Attorney General has opined that "where a statute enacted prior to 1975 required a body to establish minimum standards, revising those standards does not constitute a new program or increased level of an existing program."²³

Finally, the Chancellor's Office asserts that claimant has not established that offering POST training classes is the same as running an academy, and therefore any activities resulting from requirements on academy personnel are not mandated on community college districts.

On March 16, 2004, the Chancellor's Office submitted a letter reiterating the above comments.

²¹ Letter from Thomas J. Nussbaum, Chancellor, California Community Colleges, Chancellor's Office, received November 17, 2003, page 2.

²² *Ibid.*

²³ *Id.* at page 3, citing 83 Opinions California Attorney General 111, issued May, 2000.

Discussion

The courts have found that article XIII B, section 6 of the California Constitution²⁴ recognizes the state constitutional restrictions on the powers of local government to tax and spend.²⁵ “Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are ‘ill equipped’ to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose.”²⁶ A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.²⁷ In addition, the required activity or task must be new, constituting a “new program,” or it must create a “higher level of service” over the previously required level of service.²⁸

The courts have defined a “program” subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.²⁹ To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.³⁰ A “higher level of service” occurs when there is “an increase in the actual level or quality of governmental services provided.”³¹

²⁴ Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in November 2004) provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

²⁵ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 735.

²⁶ *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 81.

²⁷ *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174 (*Long Beach Unified School Dist.*).

²⁸ *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.*); *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

²⁹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56 (*Los Angeles I*); *Lucia Mar*, *supra*, 44 Cal.3d 830, 835).

³⁰ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 878; *Lucia Mar*, *supra*, 44 Cal.3d 830, 835.

³¹ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 877.

Finally, the newly required activity or increased level of service must impose costs mandated by the state.³²

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.³³ In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an “equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.”³⁴

The analysis addresses the following issue:

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

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

Do the test claim regulations mandate any activities?

In order for the test claim regulations to impose a reimbursable state-mandated program under article XIII B, section 6, the language must order or command a local agency to engage in an activity or task.³⁵ If the language does not do so, then article XIII B, section 6 is not triggered. Moreover, where participation in the *underlying* program is voluntary, courts have held that new requirements imposed within that underlying program do not constitute a reimbursable state mandate.³⁶

Claimant is seeking reimbursement for activities resulting from several enactments of the California Code of Regulations, title 11 (“POST regulations”), as specified on the test claim form submitted. In the text of the test claim, the claimant provided specific dates of adoption or amendment for these POST regulations, but is claiming reimbursement for several activities within the regulations that existed prior to the dates specified. For the reasons stated below, the activities that existed *prior to* the regulatory amendments specified by the claimant in this test claim were not properly claimed and will not be analyzed.

Government Code section 9605 sets forth the rules of statutory construction when a statute is amended. That section states in pertinent part:

³² *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

³³ *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

³⁴ *County of Sonoma, supra*, 84 Cal.App.4th 1264, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

³⁵ *Long Beach Unified School Dist., supra*, 225 Cal.App.3d 155, 174.

³⁶ *Kern High School Dist. supra*, 30 Cal.4th 727, 727, reaffirming *City of Merced v. State of California (City of Merced)* (1984) 153 Cal.App.3d 777.

Where a section or part of a statute is amended, it is not to be considered as having been repealed and reenacted in the amended form. The portions which are not altered are to be considered as having been the law from the time when they were enacted; the new provisions are to be considered as having been enacted at the time of the amendment; and the omitted portions are to be considered as having been repealed at the time of the amendment. ...”

The same rules of construction apply in interpreting regulations that apply in interpreting statutes,³⁷ and the California Attorney General has opined that Government Code section 9605 is applicable to a regulatory amendment.³⁸ Thus, regulatory provisions adopted on a specific date include only the new provisions, and not the pre-existing provisions. For the regulations cited in this test claim, therefore, only the *new or changed provisions* that were enacted on the dates specified are analyzed.

Accordingly, only the following activities are properly before the Commission:

1. When requesting course certifications after July 1, 2002, provide to POST newly specified information regarding course hours and qualifications of academy staff. (Cal. Code Regs., tit. 11, § 1052, subd. (a)(1) and (2); Register 2001, No. 29.)
2. When requesting course certifications after July 1, 2002, provide to POST newly specified information on instructor resumes. (Cal. Code Regs., tit. 11, § 1053, subd. (a)(2); Register 2001, No. 29.)
3. Complete and submit to POST a Course Certification Report of each certified course prior to the beginning of a new fiscal year to ensure certification for the following fiscal year, including an evaluation of the continuing need for the course, currency of curriculum, and adherence to course requirements, which has been reviewed and signed by the presenter or designee. (Cal. Code Regs., tit. 11, § 1056; Register 2001, No. 4.)
4. When appropriate, appeal a certification or decertification decision to the POST Executive Director and the POST Commission itself as follows:
 - a. file written appeal to Executive Director, along with all supporting documentation, within 30 days of the certification or decertification notice;
 - b. file written appeal to Commission itself, along with all supporting documentation, within 30 days of the date of the Executive Director’s decision; and
 - c. appear at POST Commission hearing and present evidence when necessary or appropriate.(Cal. Code Regs., tit. 11, § 1058; Register 91, No. 50.)
5. Effective July 1, 2002, ensure that the district’s primary instructors of specified courses complete the required training standards. Ensure that instructors appointed on or after

³⁷ *Dept. of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Board* (2003) 109 Cal.App.4th 1687.

³⁸ 59 Opinions California Attorney General 298 (1976).

- July 1, 2002, or who instruct at a new institution after July 1, 2002, complete the specified training standards. (Cal. Code Regs., tit. 11, § 1070, subd. (a); Register 2001, No. 29.)
6. Maintain documentation which demonstrates satisfaction of the minimum training standards of instructors, which shall be a copy of the certificate of course completion issued by the training presenter, or a POST training record, or the expanded course outline used for training equivalence. (Cal. Code Regs., tit. 11, § 1070, subd. (c); Register 2001, No. 29.)
 7. Effective July 1, 2002, ensure that the district's academy directors, academy coordinators and academy recruit training officers complete the training standards specified for the position. (Cal. Code Regs., tit. 11, § 1071, subd. (a); Register 2001, No. 29.)
 8. As Academy Director, maintain documentation demonstrating satisfaction of the minimum training standards for each staff position. (Cal. Code Regs., tit. 11, § 1071, subd. (b); Register 2001, No. 29.)
 9. Ensure POST-certified courses, on the topic of racial profiling only,³⁹ presented by community college meet specified minimum content requirements, assess student proficiency, and ensure assessment is consistent with learning objectives. (Cal. Code Regs., tit. 11, § 1082, subd. (a); Register 2002, No. 35.)

The plain language of the test claim regulations does require specified persons involved in POST training to engage in some of the activities listed above. However, based on the following analysis, staff finds that since the requirements flow from an *initial discretionary decision* by the community college district to provide the specialized training or establish an academy and employ POST training staff, the test claim regulations are not subject to article XIII B, section 6 and consequently do not constitute a state-mandated program.

Penal Code section 13510, subdivision (a), states that, “[f]or the purpose of raising the level of competence of local law enforcement officers, [POST] shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of” various local law enforcement officers. Section 13511, subdivision (a), states that, “[i]n establishing standards for training, [POST] shall, so far as consistent with the purposes of this chapter, permit required training to be obtained at institutions approved by [POST].”

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

To assist the more than 600 law enforcement agencies that voluntarily agree to abide by its minimum training standards, POST certifies hundreds of courses annually. These courses are developed and offered by more than 800 presenters statewide. POST also provides instructional resources and

³⁹ The previous version of Section 1082 contained these requirements for 19 other topic areas; the racial profiling topic was added with Register 2002, No. 35, and is the only topic area which is being analyzed.

technology, quality leadership training programs, and professional certificates to recognize peace officer achievement....

The California Constitution, article IX, Education, establishes and permits the formation of school districts, including community college districts, and county boards of education, all for the purpose of encouraging “the promotion of intellectual, scientific, moral and agricultural improvement.”⁴⁰ Education Code section 70902 states the following:

... [T]he governing board [of each community college district] may initiate and carry on any program, activity, or may otherwise act in any manner that is not in conflict with or inconsistent with, or preempted by, any law that is not in conflict with the purposes for which community college districts are established.

There are no provisions in the California Constitution, or California statutes or regulations that require community college districts to provide POST training or establish a POST training academy.

The California Community Colleges Chancellor’s Office (“CCC”) argues that the test claim regulations do not impose a reimbursable state-mandated program on community college districts, since there is no legal compulsion, pursuant to the *Kern High School Dist.* case, for the districts to offer POST courses and thus incur the attendant costs. The claimant points out that a finding of legal compulsion is not a prerequisite to finding a reimbursable state mandate.

In *Kern High School Dist.*, the California Supreme Court reaffirmed the holding of *City of Merced, supra*, stating that the requirements imposed by a test claim statute are not state-mandated if the claimant’s participation in the underlying program is voluntary.⁴¹ Here, as noted above, there is no legal compulsion because no state law requires community college districts to provide POST training or establish a POST training academy.

The cases have further found that, in the absence of strict legal compulsion, a local agency might be “practically” compelled to take an action thus triggering costs that would be reimbursable. In *Kern High School Dist.*, the court concluded that “even if there are some circumstances in which a state mandate may be found in the absence of legal compulsion, the circumstances presented in this case do not constitute such a mandate.”⁴² The court did provide language addressing what might constitute *practical* compulsion, for instance if the state were to impose a substantial penalty for nonparticipation in a program, as follows:

Finally, we reject claimants’ alternative contention that even if they have not been *legally* compelled to participate in the underlying funded programs, as a *practical* matter they have been compelled to do so and hence to incur notice- and agenda-related costs. Although we do not foreclose the possibility that a reimbursable state mandate might be found in circumstances short of legal compulsion — for example, if the state were to impose a substantial penalty (independent of the program funds at issue)

⁴⁰ California Constitution, article IX, section 1.

⁴¹ *Kern High School Dist., supra*, 30 Cal.4th 727, 731.

⁴² *Id.* at page 736.

upon any local entity that declined to participate in a given program — claimants here faced no such practical compulsion. Instead, although claimants argue that they have had “no true option or choice” other than to participate in the underlying funded educational programs, the asserted compulsion in this case stems only from the circumstance that claimants have found the benefits of various funded programs “too good to refuse” — even though, as a condition of program participation, they have been forced to incur some costs. On the facts presented, the cost of compliance with conditions of participation in these funded programs does not amount to a reimbursable state mandate. (Emphasis in original.)⁴³

The court further concluded that, unlike the circumstances in a previous case which found a state mandate existed,⁴⁴ the *Kern* claimants “have not faced ‘certain and severe ... penalties’ such as ‘double ... taxation’ and other ‘draconian’ consequences.”⁴⁵

The 2004 *San Diego Unified School Dist.* case further clarified the Supreme Court’s views on the practical compulsion issue. In that case, the test claim statutes required K-12 school districts to afford to a student specified hearing procedures whenever an expulsion recommendation was made and before a student could be expelled.⁴⁶ The Supreme Court held that hearing costs incurred as a result of statutorily required expulsion recommendations, e.g., where the student allegedly possessed a firearm, constituted a reimbursable state-mandated program.⁴⁷ Regarding expulsion recommendations that were discretionary on the part of the district, the court acknowledged the school district’s arguments, stating that in the absence of legal compulsion, compulsion *might* nevertheless be found when a school district exercised its discretion in deciding to expel a student for a serious offense to other students or property, in light of the state constitutional requirement for K-12 school districts to provide safe schools.⁴⁸ Ultimately, however, the Supreme Court denied the reimbursement for the hearing procedures regarding discretionary expulsions on alternative grounds.⁴⁹

In summary, where no “legal” compulsion is set forth in the plain language of a test claim statute or regulation, the courts have ruled that at times, based on the particular circumstances, “practical” compulsion might be found. Here, as noted above, providing POST-certified training and/or establishing a POST training academy is not legally required of community college districts. Nor does staff find any support for the notion that “practical” compulsion is applicable in the instant case. The test claim regulations do not address a situation in any way similar to the circumstances where “certain and severe” penalties could result for nonparticipation in the program or might be needed to comply with the constitutional

⁴³ *Id.* at 731.

⁴⁴ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

⁴⁵ *Kern High School Dist.*, *supra*, 30 Cal.4th 727, 751.

⁴⁶ *San Diego Unified School Dist.*, *supra*, 33 Cal.4th 859, 866.

⁴⁷ *Id.* at pages 881-882.

⁴⁸ *Id.* at page 887, footnote 22.

⁴⁹ *Id.* at page 888.

requirement imposed on K-12 school districts for safe schools. In fact, the circumstances here are substantially similar to those in the *Kern High School Dist.* case, where the district was denied reimbursement because its participation in the underlying program was voluntary, and no “certain and severe” or “substantial” penalty would result if community college districts fail to provide POST-certified training or establish a POST training academy.

Claimant further argues that, pursuant to *Butt v. State of California* (1992) 4 Cal.4th 668, 680-681, there is a constitutional mandate to educate California students, and that the state’s ultimate responsibility for public education cannot be delegated to any other entity. Since the state has not legislated the subject matter for instruction at community colleges, and there is no state mandate for any particular course of study at community colleges, the claimant argues it is irrelevant that there is no state mandate for peace officer instruction.

However, the *Butt* case is applicable to K-12 school districts rather than community college districts. Moreover, the claimant’s conclusion drawn from that case ignores a fundamental principle of state mandates law as set forth above, i.e., that either legal or practical compulsion to undertake the activity must exist. Here, neither one exists. The Supreme Court in *San Diego Unified School Dist.* underscored the fact that a state mandate is found when the state, rather than a local official, has made the decision to require the costs to be incurred.⁵⁰ In this case, the state has not required the community college district to provide POST-certified training or establish a POST training academy; the district has made that decision.

Finally, claimant asserts that the state created POST to increase the effectiveness of law enforcement, and is “charged with the obligation to train peace officers.” *Lucia Mar, supra*, states that article XIII B, section 6 was intended to preclude the state from shifting to local agencies the financial responsibility of providing public services. Claimant argues that the test claim regulations shift the burden of peace officer training costs to community college districts.

In response to claimant’s assertion that POST is “charged with the obligation to train peace officers,” the law states that POST is charged with adopting “rules establishing minimum standards relating to physical, mental, and moral fitness” to govern the recruitment of peace officers.⁵¹ In order to carry out its duties and responsibilities, POST has the power to “cooperate and secure the cooperation of county, city, city and county, and other local law enforcement agencies” and, when training and education is involved, “to cooperate with and secure the cooperation of state-level officers, agencies, and bodies having jurisdiction over systems of public higher education in continuing the development of college-level training and education programs...”⁵² Thus, the statutes authorizing POST and its programs envisioned a cooperative effort among POST, local agencies and educational institutions in order to carry out training of peace officers. When community college districts *choose* to provide POST curriculum, there is no state mandate.

Therefore, the test claim regulations are not subject to article XIII B, section 6 and consequently do not constitute a state mandate.

⁵⁰ *Id.* at page 880.

⁵¹ Penal Code sections 13510.

⁵² Penal Code section 13503, subdivisions (d) and (e).

Conclusion

Staff finds that because the underlying decisions to provide POST-certified training or establish a POST training academy are discretionary, the test claim regulations are not subject to article XIII B, section 6 of the California Constitution and consequently do not impose a state-mandated program on community college districts.⁵³

Recommendation

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

⁵³ Staff does not reach the issue raised by the Chancellor's Office that Government Code section 17556, subdivision (d), applies to deny this claim since staff recommends that the claim be denied on other grounds.