

**ITEM 5**  
**TEST CLAIM**  
**PROPOSED STATEMENT OF DECISION**

Former Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8  
(Renumbered as Sections 32281, 32282, 32286 and 32289, respectively)  
Statutes 2001, Chapter 646 (AB 79); Statutes 2001, Chapter 890 (SB 257)  
Statutes 2002, Chapter 91 (AB 2708); Statutes 2002, Chapter 506 (SB 1667)  
Statutes 2002, Chapter 735 (AB 2198)

*Comprehensive School Safety Plans II*  
02-TC-33  
Bakersfield City School District  
Sweetwater Union High School District  
Co-Claimants

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**EXECUTIVE SUMMARY**

The sole issue before the Commission on State Mandates (“Commission”) is whether the Proposed Statement of Decision accurately reflects the Commission’s decision on the *Comprehensive School Safety Plans II* test claim.<sup>1</sup>

**Recommendation**

Staff recommends that the Commission adopt the proposed Statement of Decision, beginning on page three, which accurately reflects the staff analysis and recommendation on this test claim. Minor changes, including those that reflect the hearing testimony and vote count, will be included when issuing the final Statement of Decision.

If the Commission’s vote on Item 6 modifies the staff analysis, staff recommends that the motion to adopt the proposed Statement of Decision reflect those changes, which will be made before issuing the final Statement of Decision. Alternatively, if the changes are significant, staff recommends that adoption of a proposed Statement of Decision be continued to the August 1, 2008 Commission hearing.

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<sup>1</sup> California Code of Regulations, title 2, section 1188.1, subdivision (a).

BEFORE THE  
COMMISSION ON STATE MANDATES  
STATE OF CALIFORNIA

IN RE TEST CLAIM:

Former Education Code Sections 35294.1, 35294.2, 35294.6, and 35294.8 (Renumbered as Sections 32281, 32282, 32286, and 32289, respectively);

Statutes 2001, Chapter 646 (AB 79), Statutes 2001, Chapter 890 (SB 257), Statutes 2002, Chapter 91 (AB 2708), Statutes 2002, Chapter 506 (SB 1667), and Statutes 2002, Chapter 735 (AB 2198)

Filed on June 23, 2003, by Bakersfield City School District and Sweetwater Union High School District, Co-Claimants.

**Case No.:** 02-TC-33

*Comprehensive School Safety Plans II*

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

*(Adopted on June 26, 2008)*

**STATEMENT OF DECISION**

The Commission on State Mandates (“Commission”) heard and decided this test claim during a regularly scheduled hearing on June 26, 2008. [Witness list from June 26, 2008 hearing will be included in the final Statement of Decision.]

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

The Commission [adopted/modified] the staff analysis at the hearing by a vote of [vote count will be included in the final Statement of Decision] to partially approve this test claim.

**Summary of Findings**

The subject of this test claim is the comprehensive school safety plans program, initially established in 1989, in recognition of the California constitutional principle that all students and staff of K-12 public schools have the inalienable right to attend campuses which are safe, secure, and peaceful. The stated purpose for the plans was to ensure that all K-12 schools, in cooperation with local law enforcement agencies, community leaders, parents, pupils, teachers, administrators and other interested persons, develop a comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process.

In the prior *Comprehensive School Safety Plans* test claim (98-TC-01/99-TC-10), the Commission found a reimbursable state-mandated program for the activities of writing, developing and adopting comprehensive school safety plans, which includes other associated activities such as consultation with law enforcement and other school sites, holding a public

meeting prior to adoption, and submitting the plan to the school district or county office of education for approval.

The test claim statutes for this test claim: 1) add two new elements to the safety plan; 2) address the timing for new schools to adopt their safety plans; 3) specify particular parties or entities that must be notified of the public meeting adopting the safety plan; and 4) provide procedures for notice of violent crimes committed at a school.

The Commission finds that developing and adopting the new elements of the safety plan are mandated by the state and impose a reimbursable new program or higher level of service on K-12 schools and school districts. In addition, the pre-existing requirements associated with writing, developing and adopting the comprehensive school safety plan are triggered for the development of the two new elements.

Moreover, the Commission finds that notifying particular parties or entities of the public meeting to adopt any comprehensive school safety plan is mandated by the state and imposes a reimbursable new program or higher level of service on K-12 schools and school districts, but only when the school safety planning committee is providing such notice. This activity is not reimbursable when the notice is provided by schoolsite councils, since the Supreme Court has ruled that such administrative costs are offset by existing schoolsite council funding from the State.

The provision addressing the timing for new schools to adopt and review their safety plans is not a new requirement, and the notice regarding violent crimes is discretionary on the part of the school principal, and therefore not state-mandated.

Therefore, the following activities constitute a reimbursable state-mandated new program or higher level of service on K-12 school districts and schools:

1. The following activities, for incorporating a discrimination and harassment policy as required by Education Code section 32282, subdivision (a)(2)(E) (except to the extent a policy was previously required to address sexual harassment), and hate crime reporting procedures as required by Education Code section 32282, subdivision (a)(2)(J) (but only for the period of January 1, 2002, through October 6, 2005):
  - Write and develop a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan that is relevant to the needs and resources of that particular school. (Ed. Code § 32281, subd. (b)(1).)
  - Consult with a representative from a law enforcement agency in writing and developing a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan. (Ed. Code, § 32281, subd. (b)(3).)
  - Identify appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety with regard to a discrimination and harassment policy and hate crime reporting procedures. (Ed. Code, § 32282, subd. (a)(2).)

- Consult, cooperate and coordinate with other school sites, where practical, in developing a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan. (Ed. Code, § 32282, subd. (d).)
  - Hold a public meeting at the schoolsite in order to allow members of the public the opportunity to express an opinion about the discrimination and harassment policy and hate crime reporting procedures to be included in the school safety plan. (Ed. Code, § 32288, subd. (b).)
  - Submit the safety plan with the new discrimination and harassment policy and hate crime reporting procedures, as written and updated, to the school district or county office of education for approval, in order to ensure compliance with the school safety plan requirements. (Ed. Code, §§ 32282, subd. (f), 32288, subd. (a).)
  - Review and update the discrimination and harassment policy and hate crime reporting procedures by March 1 every year. (Ed. Code, § 32286, subd. (a).)
2. For any comprehensive school safety plan being adopted, notify the following persons in writing of the public meeting held prior to adoption of the plan, pursuant to Education Code section 32288, subdivision (b)(2), but only when the school safety planning committee established pursuant to Education Code section 32281, subdivisions (b)(2) or (b)(4), is providing such notice:
- the local mayor;
  - a representative of the local school employee organization;
  - a representative of each parent organization at the schoolsite, including the parent teacher association and parent teacher clubs;
  - a representative of each teacher organization at the schoolsite;
  - a representative of the student body government; and
  - all persons that have indicated they want to be notified.

Any funds available to schoolsite councils or any other grant funds for the newly mandated activities in this test claim shall be identified in the parameters and guidelines as possible offsetting revenues, including but not limited to the following funds:

- Safe School Plans for New Schools Grant Program;
- School Safety Consolidated Competitive Grant Program;
- School and Library Improvement Block Grant and any other funds previously available for schoolsite councils established under Education Code section 52012; and
- Any funds available for schoolsite councils established under Education Code section 52852.

## BACKGROUND

The subject of this test claim is the comprehensive school safety plans program, initially established in 1989,<sup>2</sup> in recognition of the California constitutional principle that all students and staff of public primary, elementary, junior high, and senior high schools have the inalienable right to attend campuses which are safe, secure, and peaceful.<sup>3</sup> In enacting the original comprehensive school safety plans legislation, the Legislature stated:

It is the intent of the Legislature that all California public schools, in kindergarten, and grades 1 to 12, inclusive, operated by school districts, in cooperation with local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, and other persons who may be interested in the prevention of campus crime and violence, develop a comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process.<sup>4</sup>

The original legislation encouraged schools to assess the current status of school crime committed on school campuses, identify appropriate strategies and programs to provide a high level of school safety and develop an action plan, using existing resources with the help of grant funding from the state.<sup>5</sup> These activities were not required, however.

In 1997, the Legislature changed the program to require each school district and county office of education to be responsible for the overall development of comprehensive school safety plans for their K-12 schools, and to require that any schoolsite council established pursuant to Education Code sections 52012 or 52852, in consultation with local law enforcement, shall write and develop the plan.<sup>6</sup> A schoolsite council may delegate this responsibility to a school safety planning committee, consisting of the principal, one teacher who is representative of the certificated employee organization, one parent whose child attends the school, one classified employee who is representative of the classified employee organization, and other members if

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<sup>2</sup> Article 10.3 (commencing with section 35294) added to Chapter 2 of Part 21 of the Education Code by Statutes 1989, chapter 1253; subsequently renumbered to Article 5 (commencing with section 32280) of Chapter 2.5 of Part 19 of the Education Code and amended by Statutes 2003, chapter 828. Statutes 2003, chapter 828, were not pled in the test claim, however, and the Commission makes no findings with regard to those statutes.

<sup>3</sup> California Constitution, article I, section 28, subdivision (c), part of the “Victim’s Bill of Rights.”

<sup>4</sup> Education Code section 35294, as enacted in Statutes 1989, chapter 1253, subsequently renumbered to Education Code section 32280 and amended by Statutes 2003, chapter 828.

<sup>5</sup> Former Education Code section 35294.1, subsequently renumbered to section 35294.2 and amended by Statutes 1997, chapter 736, and subsequently renumbered to section 32282 and amended by Statutes 2003, chapter 828.

<sup>6</sup> Former Education Code section 35294.1, subdivisions (a) and (b), as added by Statutes 1997, chapter 736, subsequently renumbered to section 32281, subdivisions (a) and (b), and amended by Statutes 2003, chapter 828.

desired.<sup>7</sup> And in the absence of a schoolsite council, those specified members shall serve as the school safety planning committee which shall write and develop the safety plan.<sup>8</sup> In the case of small school districts, as defined, the district may develop a districtwide safety plan applicable to each schoolsite.<sup>9</sup>

The 1997 statutes also added a requirement that the comprehensive school safety plan be adopted by September 1, 1998.<sup>10</sup> That provision was amended in 1999 to require the plan be adopted by March 1, 2000, and to require that the plan be reviewed and updated by March 1 every year thereafter.<sup>11</sup>

Education Code section 35294.8, subdivision (b), was added in 1997 to require the schoolsite council or school safety planning committee, before adopting the comprehensive school safety plan, to hold a public meeting at the schoolsite in order to allow members of the public the opportunity to express an opinion about the plan.<sup>12</sup>

As of 1999, the comprehensive school safety plan was required to include, at a minimum, the following:

- Assessment of the current status of school crime committed on school campuses and at school-related functions.
- Identification of appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety, which shall include all of the following:
  - Child abuse reporting procedures consistent with Article 2.5 (commencing with section 11164) of Title 1 of Part 4 of the Penal Code.
  - Disaster procedures, routine and emergency.
  - Policies pursuant to subdivision (d) of section 48915 for pupils who committed an act listed in subdivision (c) of section 48915 and other school-designated serious acts which would lead to suspension, expulsion, or mandatory expulsion

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<sup>7</sup> Former Education Code section 35294.1, subdivision (b)(2), as added by Statutes 1997, chapter 736, subsequently renumbered to section 32281, subdivision (b)(2), and amended by Statutes 2003, chapter 828.

<sup>8</sup> Former Education Code section 35294.1, subdivision (b)(4), as added by Statutes 1997, chapter 736, subsequently renumbered to section 32281, subdivision (b)(4), and amended by Statutes 2003, chapter 828.

<sup>9</sup> Former Education Code section 35294.1, subdivision (d), as added by Statutes 1997, chapter 736, subsequently renumbered to section 32281, subdivision (d), and amended by Statutes 2003, chapter 828.

<sup>10</sup> Former Education Code section 35294.6, subdivision (a), subsequently renumbered to section 32286, subdivision (a), and amended by Statutes 2003, chapter 828.

<sup>11</sup> Statutes 1999, chapter 996.

<sup>12</sup> Subsequently renumbered to section 32288, subdivision (b), and amended by Statutes 2003, chapter 828.

recommendations pursuant to Article 1 (commencing with section 48900) of Chapter 6 of Part 27.

- Procedures to notify teachers of dangerous pupils pursuant to section 49079.
- A sexual harassment policy, pursuant to subdivision (b) of section 231.5.
- The provisions of any schoolwide dress code, pursuant to section 35183, that prohibits pupils from wearing “gang-related apparel,” if the school has adopted such a dress code.
- Procedures for safe ingress and egress of pupils, parents, and school employees to and from school.
- A safe and orderly environment conducive to learning at the school.
- The rules and procedures on school discipline adopted pursuant to sections 35291 and 35291.5.<sup>13</sup>

### Test Claim Statutes

The test claim statutes modified the requirements regarding development of comprehensive school safety plans. The specific provisions of the test claim statutes are summarized below:

- Statutes 2001, chapter 646, amended Education Code section 35294.2 to add subdivision (g), which required the state Department of Education to develop model policies on the prevention of bullying and on conflict resolution and make the model policies available to school districts, who may adopt one or both of the policies for incorporation into its school safety plan.<sup>14</sup>
- Statutes 2001, chapter 890, amended Education Code section 35294.2, subdivision (a), later renumbered section 32282, subdivision (a), to add two new elements to the comprehensive school safety plan: 1) a discrimination and harassment policy consistent with the prohibitions against discrimination contained in chapter 2 of Part 1, commencing with Education Code section 200 (replacing the sexual harassment policy pursuant to Education Code section 212.6, subdivision (b)); and 2) hate crime reporting procedures pursuant to Chapter 1.2 of Title 15 of Part 1 of the Penal Code, commencing with section 628.
- Statutes 2002, chapter 91, amended Education Code section 35294.6, subdivision (a), later renumbered to section 32286, subdivision (a), to add a requirement that a new school campus that begins offering classes to pupils after March 1, 2001, shall adopt a comprehensive school safety plan within one year of initiating operation, and shall review and update its plan by March 1 every year thereafter.

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<sup>13</sup> Former Education Code section 35294.2, subsequently renumbered to section 32282 and amended by Statutes 2003, chapter 828.

<sup>14</sup> Subdivision (g) was repealed by Statutes 2001, chapter 890, a statute enacted later in the same year that did not include the provision. (see *Ventura County v. Barry* (1927) 202 Cal. 550, 556.)

- Statutes 2002, chapter 506, amended Education Code section 35294.8, subdivision (b)(2), later renumbered to section 32288, subdivision (b)(2), to add a provision specifying particular parties or entities that *shall* be notified by the schoolsite council or school safety planning committee when the public meeting being held to adopt the comprehensive school safety plan is scheduled. Subdivision (b)(3) was added to specify particular parties or entities which the schoolsite council or school safety planning committee is *encouraged* to notify of the public meeting.
- Statutes 2002, chapter 735, amended Education Code section 35294.1, later renumbered to section 32281, to add subdivision (e), which provides that when a principal verifies through local law enforcement officials that a report has been filed of the occurrence of a violent crime on the schoolsite of an elementary or secondary school, the principal is authorized to send to each pupil's parent or legal guardian and each school employee a written notice of the occurrence and general nature of the crime. If the principal chooses to send the written notice, the Legislature encourages the notice be sent no later than the end of business on the second regular work day after the verification. However, if local law enforcement officials determine that notification of the violent crime would hinder an ongoing investigation, the notification shall be made within a reasonable period of time as determined by the local law enforcement agency and the school district.

Prior Test Claim

The Commission heard and decided the *Comprehensive School Safety Plans* test claim (98-TC-01/99-TC-10) on August 23, 2001, and reconsidered that decision on July 30, 2002. The Commission ultimately decided that the test claim statutes imposed a reimbursable state-mandated program on school districts for the increased costs of performing the following activities:

- Review the safety plan in existence on December 31, 1997, to determine if it satisfies the requirements of Education Code section 35294.9.
- Write and develop a safety plan relevant to the needs of the particular school. (Ed. Code, § 35294.1, subd. (a) & (b).) A school satisfying Education Code section 35294.9 or Education Code section 35294.1, subdivision (d), is exempt from this activity.
- Consult with a law enforcement representative in writing and developing their safety plan. (Ed. Code, § 35294.1, subd. (b)(3).) A school satisfying Education Code section 35294.9, or Education Code section 35294.1, subdivision (d), is exempt from this activity.
- Consult, cooperate and coordinate with other school sites, *if practical*, in developing and updating their safety plan. (Ed. Code, § 35294.2, subdivision (d).) A school satisfying Education Code section 35294.9, is exempt from this activity for the initial development of the safety plan.
- Assess the current status of school crime committed on school campuses and at school-related functions. (Ed. Code, § 35294.2, subd. (a)(1).) A school satisfying Education Code section 35294.9, is exempt from this activity. And to the extent that this activity



is already reimbursed under *School Crimes Reporting II* (CSM 97-TC-03), there are no costs mandated by the state.

- Identify appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety. A school satisfying Education Code section 35294.9, is exempt from this activity. (Ed. Code, § 35294.2, subd, (a)(2).)
- Develop the following procedures to include in the comprehensive school safety plan:
  - Child abuse reporting procedures consistent with Article 2.5 (commencing with section 11164) of Title 1 of Part 4 of the Penal Code.
  - Routine and emergency disaster procedures. School sites and districts may claim costs to develop this activity, but only to the extent that these costs have not been claimed under *Emergency Procedures, Earthquake and Disasters* (CSM 4241).
  - Policies pursuant to subdivision (d) of section 48915 for pupils who committed an act listed in subdivision (c) of section of 48915 and other school-designated serious acts which could lead to suspension, expulsion, or mandatory expulsion recommendations pursuant to Article 1 (commencing with section 48900) of Chapter 6 of Part 27. School sites and districts may claim costs to develop this activity, but only to the extent that these costs have not been claimed under *Suspensions, Expulsions, and Expulsion Appeals* (CSM 4455, 4456, 4463).
  - If a school has adopted a dress code, define gang-related apparel in the comprehensive school safety plan.
  - Procedures for safe ingress and egress of pupils, parents and school employees to and from school.
  - A safe and orderly environment conducive to learning at the school.  
(Ed. Code, § 35294.2, subd. (a)(2).)

A school satisfying Education Code section 35294.9, is exempt from this activity.

- Integrate existing policies and procedures on sexual harassment, emergency disasters, dress code, notification to teachers of dangerous pupils, and school discipline into the comprehensive school safety plan. (Ed. Code, § 35294.2, subd. (a).)
- Adopt a safety plan by March 1, 2000, and annually review and update the safety plan by March 1 to ensure proper implementation. (Ed. Code, §§ 35294.2, subd. (e), 35294.6, subd. (a).)
- Hold a public meeting at the school site in order to allow members of the public the opportunity to express an opinion about the safety plan. (Ed. Code, § 35294.8, subd. (b).)
- Submit the safety plan to the school district or County Office of Education for approval. (Ed. Code, §§ 35294.2, subd. (f), 35294.8, subd. (a).)
- Annually notify the State Department of Education by October 15 of any schools that have not complied with writing and developing a safety plan in accordance with

section 35294.1. (Ed. Code, § 35294.8, subd. (c).) This activity specifically applies to school districts and County Offices of Education.

- Commencing in July 2000, and every July thereafter, report on the status of the safety plan, including a description of its key elements in the annual school accountability report card prepared pursuant to sections 33126 and 35256. (Ed. Code, § 35294.6, subd. (b).) To the extent that this activity is already reimbursed under *School Accountability Report Cards* (CSM 97-TC-21), there are no costs mandated by the state.
- Make available an updated file of all safety-related plans and materials for public inspection. (Ed. Code, § 35294.2, subd. (e).)

The Commission also specifically found that the plain language of the test claim statutes did not require school sites or school districts to *implement* their safety plans, since the legislative intent language stated that the purpose of the test claim statutes was to “develop a comprehensive school safety plan that addresses the safety concerns identified through a systematic planning process” and did not identify implementation as a purpose.

#### Subsequent Renumbering of Comprehensive School Safety Plan Statutes

Statutes 2003, chapter 828, renumbered the comprehensive school safety plan statutes in the Education Code as follows:

Section 35294 → 32280  
Section 32594.1 → 32281  
Section 35294.2 → 32282  
Section 35294.3 → 32283  
Section 35294.4 → 32284  
Section 35294.5 → 32285  
Section 35294.6 → 32286  
Section 35294.7 → 32287  
Section 35294.8 → 32288  
Section 35294.9 → repealed

The parameters and guidelines for the previous test claim on this subject, *Comprehensive School Safety Plans* (98-TC-01/99-TC-10), were amended to reflect these new section numbers and the following analysis references the new sections where appropriate.

#### **Claimant’s Position**

Claimant asserts that the test claim statutes cause school districts to incur increased costs mandated by the state by requiring the following new activities:

- Verifying through the local law enforcement agency whether or not a violent crime occurred on campus.
- Preparing and distributing notices to parents/guardians and employees when a violent crime has occurred on campus as verified by a local law enforcement agency.
- Researching, developing and annually reviewing and updating a Discrimination Policy.
- Researching, developing and annually reviewing and updating a Harassment Policy.

- Researching, developing and annually reviewing and updating a Hate Crimes Reporting procedure.
- Ensuring that a new campus beginning to offer classes to pupils after March 1, 2001, prepares a safety plan within one year that complies with the provisions of Article 10.3.
- Preparing and distributing a notice of a safety plan public hearing to specified persons and entities.

Claimant further states that school districts have incurred or will incur costs in excess of \$1,000 per fiscal year to perform these activities.

The claimant filed comments on the draft staff analysis via e-mail stating that “[t]he DSA is consistent with the Commission application of the referenced cases (e.g., Kern and school site council meeting agendas) so no written response is required, unless there are changes at the time of the Final Staff Analysis.”

### **Position of Department of Finance**

The Department asserts the following:

- With regard to the new provisions on reporting violent crime at a school (Ed. Code § 35294.1, subdivision (e)), the language “[w]hen a principal or his or her designee verifies ...,” indicates that a principal has a choice and the activity is not required. Also the words “may,” “if,” and “encourages” are permissive in regards to the written notice. Therefore, these costs are not reimbursable.
- With regard to the new provisions on a Discrimination Policy, Harassment Policy and Hate Crimes Reporting procedures (Ed. Code § 35294.2), a harassment policy was already required to be included in comprehensive school safety plans prior to the test claim statutes. Therefore, only the inclusion of a Discrimination Policy and Hate Crimes Reporting are new requirements. Also, the majority of costs associated with these activities should be in researching and developing the policies. The annual review should have minimal costs. The underlying hate crimes reporting requirements in statute are suspended for 2002-03 and 2003-04, so there is no requirement to have a policy of compliance. New requirements based on federal law have been promulgated by the Department of Education. Therefore, the expectation is the costs will decrease substantially or be nonexistent after the first year.
- With regard to the new provisions addressing new schools adopting safety plans (Ed. Code § 35294.6), the test claim statute added clarifying language as to when a new school would have to adopt its safety plan. Since plans were already required of all schools, the provisions do not constitute a reimbursable new program or higher level of service.
- With regard to preparing and distributing a notice of the safety plan public meeting to specified persons and entities (Ed. Code § 35294.8, subd. (b)(2) and (b)(3)), subdivision (b)(3) encourages rather than requires notice to local churches, civic leaders and business organizations. Thus the activity is not reimbursable.

The Department of Finance did not file any written comments on the draft staff analysis.

## COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution<sup>15</sup> recognizes the state constitutional restrictions on the powers of local government to tax and spend.<sup>16</sup> “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.”<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> To determine if the program is new or imposes a higher level of service, the test claim requirements must be compared with the legal requirements in effect immediately before the enactment of the test claim statutes.<sup>21</sup> A “higher level of service” occurs when there is “an increase in the actual level or quality of governmental services provided.”<sup>22</sup>

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<sup>15</sup> 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.”

<sup>16</sup> *Department of Finance v. Commission on State Mandates (Kern High School District)* (2003) 30 Cal.4th 727, 735.

<sup>17</sup> *County of San Diego v. State of California (County of San Diego)* (1997) 15 Cal.4th 68, 81.

<sup>18</sup> *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

<sup>19</sup> *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*).

<sup>20</sup> *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 (*County of Los Angeles*); *Lucia Mar, supra*, 44 Cal.3d 830, 835).

<sup>21</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 878; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

<sup>22</sup> *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.<sup>23</sup>

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.<sup>24</sup> 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.”<sup>25</sup>

The analysis addresses the following issues:

- Do the test claim statutes impose a state-mandated new program or higher level of service on K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution?
- Do the test claim statutes impose costs mandated by the state within the meaning of Government Code section 17514 and article XIII B, section 6 of the California Constitution?

**Issue 1: Do the test claim statutes impose a state-mandated new program or higher level of service on K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution?**

For the test claim statutes to impose a state-mandated program, the language must order or command a school district to engage in an activity or task. If the language does not do so, then article XIII B, section 6 is not triggered. Moreover, where program requirements are only invoked after the district has made an underlying discretionary decision causing the requirements to apply, or where participation in the underlying program is voluntary, courts have held that resulting new requirements do not constitute a reimbursable state mandate.<sup>26</sup>

A “new program or higher level of service” is imposed when the mandated activities: a) are new in comparison with the pre-existing scheme; *and* b) result in an increase in the actual level or quality of governmental services provided by the district.<sup>27</sup> To make this determination, the mandated activities must be compared with the legal requirements in effect immediately before enactment of the test claim statutes.

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<sup>23</sup> *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.

<sup>24</sup> *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

<sup>25</sup> *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 (*City of San Jose*).

<sup>26</sup> *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, 783; *Kern High School Dist., supra*, 30 Cal.4<sup>th</sup> 727, 727.

<sup>27</sup> *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 877; *Lucia Mar, supra*, 44 Cal.3d 830, 835.

Writing New Policies for Inclusion in Comprehensive School Safety Plan (Ed. Code §32282, subds. (a)(2)(E) and (a)(2)(J)<sup>28</sup>

School districts and county offices of education are responsible for the overall development of all comprehensive school safety plans for their K-12 schools,<sup>29</sup> and schoolsite councils established under Education Code sections 52012 and 52852, or school safety planning committees as delegated by a schoolsite council or in the absence of a schoolsite council, are required to “write and develop a comprehensive school safety plan relevant to the needs and resources of that particular school.”<sup>30</sup> Since the Supreme Court in *Kern High School District* has found participation in some of the underlying voluntary schoolsite council programs is voluntary, the question arises as to whether a state mandate exists for schoolsite councils to write and develop comprehensive school safety plans.

The primary question in *Kern* centered on whether various education-related programs funded by the state that were required to provide notice of meetings could obtain reimbursement for the costs of providing such notice under article XIII B, section 6.<sup>31</sup> School districts participating in these education-related programs are granted state or federal funds to operate the program, and are required to establish schoolsite councils or advisory committees that help administer the program.<sup>32</sup> The court found that for eight of the nine funded programs — including schoolsite councils established under Education Code sections 52012 and 52852 — the claimants were not compelled to participate in the underlying funded programs and thus could not establish a reimbursable state mandate based on a theory of legal compulsion.<sup>33</sup> The court stated: “If a school district elects to participate in any underlying voluntary education-related funded program, the obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate.”<sup>34</sup>

Here, however, the requirement to write and develop comprehensive school safety plans stems from the fact that *each school* is required to have a plan. The schoolsite council, if one exists for that school, is tasked with writing and developing a safety plan pursuant to Education Code section 32281, subdivision (b)(1). The schoolsite council may delegate this responsibility to a school safety planning committee with specified members, pursuant to subdivision (b)(2). In the absence of a schoolsite council, subdivision (b)(4) provides that the members specified in subdivision (b)(2) shall serve as the school safety planning committee. Thus, regardless of the entity responsible for writing and developing the safety plan, the state has *mandated* that a plan be written and developed; the fact that some schoolsite councils are voluntary is not relevant here.

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<sup>28</sup> Former Education Code section 35294.2, subdivisions (a)(2)(E) and (a)(2)(J).

<sup>29</sup> Education Code section 32281, subdivision (a).

<sup>30</sup> Education Code section 32281, subdivision (b).

<sup>31</sup> *Kern High School District, supra*, 30 Cal.4<sup>th</sup> 727, 730.

<sup>32</sup> *Id.* at 732.

<sup>33</sup> *Id.* at 731.

<sup>34</sup> *Id.* at 727.

Safety plan contents are set forth in Education Code section 32282, and the test claim statutes amended the plan requirements as follows:

- (a) The comprehensive school safety plan shall include, but not necessarily be limited to, the following:
  - (1) Assessing the current status of school crime committed on school campuses and at school-related functions.
  - (2) Identifying appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety, which shall include the development of all of the following:
    - (A) Child abuse reporting procedures consistent with Article 2.5 (commencing with Section 11164) of Title 1 of Part 4 of the Penal Code.
    - (B) Disaster procedures, routine and emergency.
    - (C) Policies pursuant to subdivision (d) of Section 48915 for pupils who committed an act listed in subdivision (c) of Section 48915 and other school-designated serious acts which would lead to suspension, expulsion, or mandatory expulsion recommendations pursuant to Article 1 (commencing with Section 48900) of Chapter 6 of Part 27.
    - (D) Procedures to notify teachers of dangerous pupils pursuant to Section 49079.
    - (E) A sexual harassment policy, pursuant to subdivision (b) of Section 231.5 discrimination and harassment policy consistent with the prohibition against discrimination contained in Chapter 2 (commencing with Section 200) of Part 1.
    - (F) The provisions of any schoolwide dress code, pursuant to Section 35183, that prohibits pupils from wearing "gang-related apparel," if the school has adopted such a dress code. ...
    - (G) Procedures for safe ingress and egress of pupils, parents, and school employees to and from school.
    - (H) A safe and orderly environment conducive to learning at the school.
    - (I) The rules and procedures on school discipline adopted pursuant to Sections 35291 and 35291.5.
    - (J) Hate crime reporting procedures pursuant to Chapter 1.2 (commencing with Section 628) of Title 15 of Part 1 of the Penal Code.

Section 32282, subdivision (a), requires the comprehensive school safety plan to identify appropriate strategies and programs, and address procedures for complying with existing laws related to school safety, with regard to various subject areas. The test claim statutes added two new subject areas: 1) a discrimination and harassment policy; and 2) hate crime reporting procedures. Thus, the plain language of the test claim statute *requires* the safety plan to include a discrimination and harassment policy and hate crime reporting procedures.

Both of these requirements are new in comparison to the pre-existing scheme, except that the safety plan was previously required to include a sexual harassment policy, pursuant to Education Code section 231.5. Immediately prior to enactment of the test claim statutes, subdivision (b) of section 231.5 stated:

Each educational institution in the State of California shall have a written policy on sexual harassment. It is the intent of the Legislature that each educational

institution in this state include this policy in its regular policy statement rather than distribute an additional written document.<sup>35</sup>

The language of the test claim statute, cited above, changed the reference from a ‘sexual harassment policy’ pursuant to section 231.5, to the more general reference to a ‘discrimination and harassment policy’ consistent with the prohibition against discrimination – including sexual harassment – contained in the entire chapter on educational equity (Part 1, Chapter 2, commencing with section 200). At the time that test claim statute was enacted, Education Code section 200, subdivision (a), stated the broad policy regarding educational equity as follows:

It is the policy of the State of California to afford all persons in public schools, regardless of their sex, ethnic group identification, race, national origin, religion, or mental or physical disability, equal rights and opportunities in the educational institutions of the state. The purpose of this chapter is to prohibit acts which are contrary to that policy and to provide remedies therefor.<sup>36</sup>

The requirement for the comprehensive school safety plan to contain a policy on sexual harassment was thus subsumed into the new requirement for a broader discrimination and harassment policy, consistent with the chapter on educational equity. Therefore, the requirement for the plan to include a discrimination and harassment policy is new in comparison to the pre-existing scheme, but *only to the extent it goes beyond* the previous requirement for a sexual harassment policy.

With regard to the requirement for hate crime reporting procedures, the Department of Finance stated:

The underlying hate crimes reporting requirements in statute are suspended for 2002-2003 and 2003-2004, so there is no requirement to have a policy of compliance. New requirements based on federal law have been promulgated by the Department of Education. Therefore, we expect the costs to decrease substantially or be nonexistent after the first year.<sup>37</sup>

The Legislature previously established requirements in Penal Code sections 628 et seq. for school districts to collect and report data regarding crimes committed within their jurisdiction, and two prior test claims on this subject were approved by the Commission: *School Crimes Statistics Reporting and Validation* (CSM-4387) and *School Crimes Reporting II* (97-TC-03). The parameters and guidelines for these test claims were consolidated by the Commission on September 28, 2000.

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<sup>35</sup> As enacted by Statutes 1998, chapter 914, AB 499.

<sup>36</sup> As enacted by Statutes 1998, chapter 914, AB 499; the purpose of that act was to consolidate and standardize the non-discrimination language in the Education Code into two chapters, one for K-12 and one for higher education. (Sen. Rules Committee, Office of Sen. Floor Analyses, Third Reading Analysis, Assem. Bill No. 499 (1997-98 Reg. Sess.) as amended July 22, 1998, p. 1.)

<sup>37</sup> Department of Finance comments, September 30, 2003, page 2.



In Statutes 2000, chapter 955, the Legislature amended Penal Code section 628 to specifically address hate crimes in its intent statement:

It is the intent of the Legislature in enacting this section to ensure that schools, school districts, local government, and the Legislature have sufficient data and information about the type and frequency of crime, *including hate motivated incidents and hate crimes*, occurring on school campuses to permit development of effective programs and techniques to combat crime on school campuses. (Emphasis added.)

Section 628.2 required each principal of a school in a school district to forward a report of crimes, including hate motivated incidents and hate crimes, committed on school grounds to the district superintendent or county office of education.<sup>38</sup> As noted by the Department of Finance, however, the school crimes reporting mandate was suspended beginning with the 2002-03 fiscal year in Government Code section 17581.5.<sup>39</sup> Government Code section 17581.5 provides that a school district shall not be required to implement a program for a given fiscal year when two conditions are met: 1) the program was found to be a reimbursable state mandate; and 2) the program has been identified by the Legislature in the Budget Act as being a program for which reimbursement is not provided for that fiscal year. The school crimes reporting mandate was specifically identified in section 17581.5 as such a program, and the program was not funded in the Budget Act for three fiscal years.<sup>40</sup> It is noteworthy that unless the underlying substantive requirements are repealed, school districts would be required to implement such programs once again in a fiscal year where funding is provided in the Budget Act and the mandate is deleted from Government Code section 17581.5.

However, section 17581.5 did not identify comprehensive school safety plans, or hate crime reporting procedures, as programs that would be suspended for a fiscal year when no reimbursement was provided in the State Budget Act. In fact, since there was no finding at the time that writing and developing hate crime reporting procedures for the safety plan constituted a reimbursable state mandate, section 17581.5 could not have been applicable to relieve districts from implementing any mandate regarding the inclusion of hate crime reporting procedures in the comprehensive school safety plan. Therefore, the Commission finds suspension of the school crimes reporting mandate did not affect the requirement that hate crimes reporting procedures be developed and included in the comprehensive school safety plan.

But on October 7, 2005, the Penal Code provisions requiring school crime reporting were *repealed* by Statutes 2005, chapter 512, and the Commission subsequently set aside the consolidated parameters and guidelines for the school crime reporting test claims. Chapter 512 did not change the requirement to include hate crime reporting procedures in the

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<sup>38</sup> As enacted by Statutes 2000, chapter 955.

<sup>39</sup> Statutes 2002, chapter 1167.

<sup>40</sup> The mandate was suspended for fiscal years 2002/03 (Budget Act, Stats. 2002, ch. 379 (AB 425), line item 6110-295-0001), 2003/04 (Budget Act, Stats. 2003, ch. 157 (AB 1765), line item 6110-295-0001), and 2004-05 (Budget Act, Stats. 2004, ch. 208 (SB 1113), line item 6110-295-0001).

comprehensive school safety plan as established in Education Code section 32282, subdivision (a)(2)(J). However, a conflict was created since the repealed Penal Code provisions are incorporated by reference into subdivision (a)(2)(J) and form the entire basis for the requirement to develop hate crime reporting procedures in subdivision (a)(2)(J). Therefore, the question is whether repeal of those Penal Code provisions caused an implied repeal of subdivision (a)(2)(J) on October 7, 2005, when chapter 512 was enacted.

In construing statutes, the courts assume that “in enacting a statute the Legislature was aware of existing, related laws and intended to maintain a consistent body of statutes.”<sup>41</sup> Thus, there is a presumption against repeals by implication, and such repeals will occur “only where the two acts are so inconsistent that there is no possibility of concurrent operation, or where the later provision gives undebatable evidence of an intent to supersede the earlier; the courts are bound to maintain the integrity of both statutes if they may stand together.”<sup>42</sup> When the statutes at issue appear in separate codes, “the codes blend into each other and constitute a single statute for the purposes of statutory construction.”<sup>43</sup>

The courts have also addressed the issue of incorporation by reference of one statute or set of statutes into another. In *People v. Eddy* (1995) 32 Cal.App.4<sup>th</sup> 1098, 1105, the basic rule was stated that where a statute adopts by specific reference the provisions of another statute, such provisions are incorporated in the form in which they exist at the time of the reference and not as subsequently modified. The converse rule, which was applied in that case, states that “where the reference is general instead of specific, such as ... *to a system or body of laws ...*, the referring statute takes the law or laws referred to not only in their contemporary form, *but also as they may be changed from time to time ...*” including elimination of the statute by repeal. (Emphasis in original.)<sup>44</sup>

As noted above, Education Code section 32282, subdivision (a)(2)(J), specifies that “[h]ate crime reporting procedures pursuant to Chapter 1.2 (commencing with Section 628) of Title 15 of Part 1 of the Penal Code,” must be included in the comprehensive school safety plan. This reference to the entire chapter manifests the Legislature’s intent that the general body of laws encompassing “Reporting of School Crimes” was incorporated by reference, and the referring statute in the Education Code would thus incorporate the Penal Code chapter *as modified or repealed*.

When the entire chapter in the Penal Code was repealed, the bill analysis for that statute stated the purpose was to eliminate the unfunded California Safe Schools Assessment (CSSA) crime reporting program. The rationale for eliminating the program by repealing the chapter was set forth as follows:

Rationale: CSSA was established in 1995. The program was defunded in the 2002 Budget Act ...because of controversy about the kind of school crime data,

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<sup>41</sup> *Sacramento Newspaper Guild v. Sacramento County Board of Supervisors* (1968) 263 Cal.App.2d 41, 54.

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> *People v. Eddy, supra*, 32 Cal.App.4<sup>th</sup> 1098, 1105; citing *Palermo v Stockton Theatres* (1948) 32 Cal.2d 53, 59.

which should be collected, how that data should be used, and whether the data was accurate. Penal Code sections mandating the program were never eliminated causing confusion in the field, and worried (sic) among [Local Education Agencies] that they are violating the law because they are not collecting crime data.<sup>45</sup>

Since the chapter containing the Penal Code sections was repealed because of controversy over the data, and schools are no longer required to report any crimes under these statutory provisions, it follows that *procedures* for reporting hate crimes, pursuant to those repealed statutes, are no longer needed. The Legislature's intent to clarify that crime reporting is no longer required provides "undebatable" evidence of an intent to nullify the requirements of the referring statute, since continuing to require such reporting procedures to be placed in the safety plan after the underlying requirement to make the report was removed leads to an absurd result. There is no other evidence in the record or in law to support an alternative interpretation of these provisions.

The Commission therefore finds that the circumstances under which the Penal Code sections at issue were repealed on October 7, 2005, demonstrates the Legislature's intent to cease requiring hate crime reporting procedures in the comprehensive school safety plan on and after October 7, 2005. Thus, the requirement for hate crime reporting procedures in the comprehensive school safety plan was only in effect from January 1, 2002, through October 6, 2005.

The new requirements for the discrimination and harassment policy and hate crime reporting procedures increase the actual level or quality of governmental services provided by the district since they are intended to ensure that all persons are afforded equal rights and opportunities to education in California's K-12 schools. Therefore, the Commission finds the new requirements to develop and include in the comprehensive school safety plan a discrimination and harassment policy (except to the extent a policy was previously required to address sexual harassment) and hate crime reporting procedures (only for the period of January 1, 2002, through October 6, 2005) constitute a state-mandated new program or higher level of service within the meaning of article XIII B, section 6.

These new elements were added to the existing required plan and existing mandated program, the *Comprehensive School Safety Plans* test claim (99-TC-10/98-TC-01). In that program, several activities associated with writing, developing, adopting and updating safety plans were approved for reimbursement. Those associated requirements may apply to the writing and developing of the *new* policies and procedures addressed in this test claim, since the Legislature is "deemed to be aware of statutes and judicial decisions already in existence, and to have enacted or amended a statute in light thereof."<sup>46</sup> Thus, the existing statutes must be reviewed to determine which of the associated activities have been triggered by the test claim statutes adding the new policy and procedures to the safety plan.

In construing statutes, the court's basic task is to ascertain the intent of the Legislature to carry out the purpose of the statute.<sup>47</sup> The Supreme Court has stated:

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<sup>45</sup> Assembly Committee on Education, SB 512 Bill Analysis, June 22, 2005 hearing, page 7.

<sup>46</sup> *People v. Harrison* (1989) 48 Cal.3d 321, 329.

<sup>47</sup> *Estate of Griswold* (2001) 25 Cal.4<sup>th</sup> 904, 910.

We begin by examining the statutory language, giving the words their usual and ordinary meaning. [Citations.] If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs. [Citations.] If there is ambiguity, however, we may then look to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citations.] In such cases, we ... select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute ...<sup>48</sup>

Statutory language must also be construed “in the context of the entire statute ... and the statutory scheme of which it is a part.”<sup>49</sup> Moreover, the matters to be considered include “the context of the legislation, the object in view, the evils to be remedied, the history ... of legislation upon the same subject, public policy, and contemporaneous construction.”<sup>50</sup>

The plain language of the Education Code sets forth the following activities associated with writing, developing and adopting the comprehensive school safety plan, including the new policies on discrimination and harassment and hate crime reporting:

- Section 32281, subdivision (b)(1), requires the school safety plan be written and developed relevant to the needs and resources of that particular school.
- Section 32281, subdivision (b)(3), requires consultation with a representative from a law enforcement agency in the writing and development of the school safety plan.
- Section 32282, subdivision (a)(2), requires identification of appropriate strategies and programs that will provide or maintain a high level of school safety and address the school’s procedures for complying with existing laws related to school safety in developing the various components of the school safety plan.
- Section 32282, subdivision (d), requires consultation, cooperation and coordination with other schoolsite councils or safety committees, where practical, in developing and updating a school safety plan.
- Section 32282, subdivision (f), requires the school safety plan as written and updated to be submitted for approval pursuant to section 32288. Section 32288, subdivision (a), requires approval by the school district or county office of education; section 32288, subdivision (b), requires a public meeting be held prior to adoption of the plan.
- Section 32286, subdivision (a), requires the school safety plan to be reviewed and updated by March 1 every year.

In addition to a plain reading of the statutory language, the legislative history supports the applicability of these statutory activities to the new elements in the safety plan. In 1985, the Interagency School Safety Demonstration Act<sup>51</sup> was added to the Education Code. That act

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<sup>48</sup> *Id.* at 911.

<sup>49</sup> *Phelps v. Stostad* (1997) 16 Cal.4<sup>th</sup> 23, 32.

<sup>50</sup> *Flowmaster, Inc. v. Superior Court* (1993) 16 Cal.App.4<sup>th</sup> 1019, 1028.

<sup>51</sup> Statutes 1985, chapter 1457; Education Code sections 32260 et seq.

established an interagency coordination system to resolve school and community problems of truancy and crime. The test claim statutes<sup>52</sup> added hate crimes to the types of crimes to be addressed by the act. Education Code section 32261, as modified by the test claim statutes, set forth the legislative findings, declarations and intent as follows:

(a) The Legislature hereby recognizes that all pupils enrolled in the state public schools have the inalienable right to attend classes on school campuses which are safe, secure, and peaceful. The Legislature also recognizes that pupils cannot fully benefit from an educational program unless they attend school on a regular basis. In addition, the Legislature further recognizes that school crime, vandalism, truancy, and excessive absenteeism are significant problems on far too many school campuses in the state.

(b) The Legislature hereby finds and declares that the establishment of an interagency coordination system is the most efficient and long-lasting means of resolving school and community problems of truancy and crime, including vandalism, drug and alcohol abuse, gang membership, \*\*\* gang violence, and hate crimes.

(c) It is the intent of the Legislature in enacting this chapter to support California public schools to develop comprehensive safety plans that are the result of a systematic planning process, that include strategies aimed at the prevention of, and education about, potential incidents involving crime and violence on school campuses, and that address the safety concerns of local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, school police, and other school employees interested in the prevention of school crime and violence.

(d) It is the intent of the Legislature in enacting this chapter to encourage school districts, county offices of education and law enforcement agencies to develop and implement interagency strategies, in-service training programs, and activities that will improve school attendance and reduce the rates of school crime, including vandalism, drug and alcohol abuse, gang membership, \*\*\* gang violence, and hate crimes.

...

Additionally, the Senate analysis of the test claim statute adding hate crimes stated that “findings and recommendations made at the state and federal level indicate the need for a *comprehensive* approach to hate crime and violence issues.”<sup>53</sup> (Emphasis added.)

In originally enacting the comprehensive school safety plan program, the Legislature set forth its intent in Education Code section 35294, which stated:

It is the intent of the Legislature that all California public schools, in kindergarten, and grades 1 to 12, inclusive, operated by school districts, in cooperation with local law enforcement agencies, community leaders, parents, pupils, teachers, administrators, and other persons who may be interested in the prevention of campus crime and violence, develop a comprehensive school safety plan that

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<sup>52</sup> Statutes 2001, chapter 890.

<sup>53</sup> Senate Rules Committee, Office of Senate Floor Analyses, SB 257 Analysis, September 20, 2001, page 2.

addresses the safety concerns identified through a systematic planning process. For the purposes of this section, law enforcement agencies include local police departments, county sheriff's offices, school district police or security departments, probation departments, and district attorneys' offices. For purposes of this section a "safety plan" means a plan to develop strategies aimed at the prevention of, and education about, potential incidents involving crime and violence on the school campus.

The language in these enactments reflects the clear legislative intent that campus violence and crime be addressed in a comprehensive and coordinated fashion with participation by a wide variety of parties in the school and surrounding community, including law enforcement agencies. A systematic planning process is to be used to ascertain the safety concerns of those parties. Furthermore, the purpose for both the interagency coordination system and the comprehensive safety plan is to provide strategies and education to prevent crime and violence on school campuses.

Here, the addition of the new elements to the safety plan, i.e., a discrimination and harassment policy and hate crime reporting procedures, are substantive additions to the plan. Given the comprehensive and coordinated approach to addressing crime and violence on school campuses, the Commission finds that, in order to carry out the Legislature's intent, addition of these new elements to existing plans subjects them to the same requirements for a comprehensive and coordinated approach as the *initial* writing, development and adoption of the plan.

As a final matter, there were two statutory exemptions regarding development of comprehensive school safety plans at the time the program was initiated. First, Education Code section 32281, subdivision (d), provides that small school districts, as defined, can develop a *districtwide* comprehensive school safety plan, to be applicable to each schoolsite in the district, in lieu of each school developing its own plan for the schoolsite. This provision continues in effect and is applicable for purposes of the newly required safety plan elements.

Second, former Education Code section 35294.9 provided that a school, other than a school in a small school district, that submits a comprehensive school safety plan in existence on December 31, 1997, shall be deemed to have satisfied the comprehensive school safety plan requirements as they existed on and after the effective date of the addition of the section, if the comprehensive school safety plan met all of the requirements of section 32282. Section 35294.9 is inapplicable here, since any school's safety plan would not have included the two newly required elements of the plan and would therefore not have met "all the requirements of" section 32282.

Accordingly, the Commission finds the following activities, needed to write, develop, adopt and update a discrimination and harassment policy as required by Education Code section 32282, subdivision (a)(2)(E) (except to the extent a policy was previously required to address sexual harassment), and hate crime reporting procedures as required by Education Code section 32282, subdivision (a)(2)(J) (but only for the period of January 1, 2002, through October 6, 2005), constitute a new program or higher level of service:

- Write and develop a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan that is relevant to the needs and resources of that particular school. (Ed. Code § 32281, subd. (b)(1).)

- Consult with a representative from a law enforcement agency in writing and developing a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan. (Ed. Code, § 32281, subd. (b)(3).)
- Identify appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety with regard to a discrimination and harassment policy and hate crime reporting procedures. (Ed. Code, § 32282, subd. (a)(2).)
- Consult, cooperate and coordinate with other school sites, where practical, in developing a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan. (Ed. Code, § 32282, subd. (d).)
- Hold a public meeting at the schoolsite in order to allow members of the public the opportunity to express an opinion about the discrimination and harassment policy and hate crime reporting procedures to be included in the school safety plan. (Ed. Code, § 32288, subd. (b).)
- Submit the safety plan with the new discrimination and harassment policy and hate crime reporting procedures, as written and updated, to the school district or county office of education for approval, in order to ensure compliance with the school safety plan requirements. (Ed. Code, §§ 32282, subd. (f), 32288, subd. (a).)
- Review and update the discrimination and harassment policy and hate crime reporting procedures by March 1 every year. (Ed. Code, § 32286, subd. (a).)

*New Requirements for Parties to be Notified of Public Meeting (Ed. Code §32288, subds. (b)(2) & (b)(3)<sup>54</sup>*

Education Code section 32288 was modified by the test claim statutes as follows:

(a) In order to ensure compliance with this article, each school shall forward its comprehensive school safety plan to the school district or county office of education for approval.

(b)(1) Before adopting its comprehensive school safety plan, the schoolsite council or school safety planning committee shall hold a public meeting at the schoolsite in order to allow members of the public the opportunity to express an opinion about the school safety plan.

(2) The schoolsite council or school safety planning committee shall notify, in writing, the following persons and entities, if available, of the public meeting:

(A) The local mayor.

(B) A representative of the local school employee organization.

(C) A representative of each parent organization at the schoolsite, including the parent teacher association and parent teacher clubs.

(D) A representative of each teacher organization at the schoolsite.

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<sup>54</sup> Former Education Code section 35294.8, subdivisions (b)(2) and (b)(3).

(E) A representative of the student body government.

(F) All persons that have indicated they want to be notified.

(3) The schoolsite council or school safety planning committee is encouraged to notify in writing, the following persons and entities, if available, of the public meeting:

(A) A representative of the local churches.

(B) Local civic leaders.

(C) Local business organizations.

(c) In order to ensure compliance with this article, each school district or county office of education shall annually notify the State Department of Education by October 15 of any schools that have not complied with Section 35294.1.

The plain language of these new provisions *require* notice of the specified parties under subdivision (b)(2) but only *encourage* notice of parties specified under subdivision (b)(3). Therefore, the only state-mandated activity is to notify the parties enumerated in subdivision (b)(2).

The activity of notifying these parties is new in comparison to the pre-existing scheme. It provides an increased level of service to the public by ensuring that critical parties receive notice and can participate in the public meeting to adopt the comprehensive school safety plan.

Therefore, the Commission finds the activity of notifying the parties specified in Education Code section 32288, subdivision (b)(2), of the public meeting required prior to adoption of a comprehensive school safety plan constitutes a state-mandated new program or higher level of service within the meaning of article XIII B, section 6.

*Safety Plans for New Schools (Ed. Code §32286, subd. (a)<sup>55</sup>)*

Education Code section 32286, subdivision (a), was amended by the test claim statutes as follows:

Each school shall adopt its comprehensive school safety plan by March 1, 2000, and shall review and update its plan by March 1, every year thereafter. A new school campus that begins offering classes to pupils after March 1, 2001, shall adopt a comprehensive school safety plan within one year of initiating operation, and shall review and update its plan by March 1, every year thereafter.

The plain language of the new provisions require new school campuses to adopt a comprehensive school safety plan within one year and review and update the plan by March 1 every year thereafter.

The Department of Finance points out that the requirement is not new, but merely a clarification of pre-existing law, since plans were already required of all schools. The Commission agrees with the Department. Adopting a plan by a date certain, and reviewing and updating that plan on an annual basis were previously required of all schools, new or existing, by subdivision (a) of section 32286. That activity is reimbursable under the original test claim, *Comprehensive School Safety Plans*. Clarification for schools that begin operation after March 1, 2001, does not impose a new requirement. Therefore, the Commission finds that the change

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<sup>55</sup> Former Education Code section 35294.6, subdivision (a).



to subdivision (a) of section 32286 does not constitute a state-mandated new program or higher level of service within the meaning of article XIII B, section 6.

*Violent Crime on School Site (Ed. Code §32281, subd. (e))*<sup>56</sup>

The test claim statutes added subdivision (e) of Education Code section 32281 which states:

(1) *When a principal or his or her designee verifies through local law enforcement officials that a report has been filed of the occurrence of a violent crime on the schoolsite of an elementary or secondary school at which he or she is the principal, the principal or the principal’s designee may send to each pupil’s parent or legal guardian and each school employee a written notice of the occurrence and general nature of the crime. If the principal or his or her designee chooses to send the written notice, the Legislature encourages the notice be sent no later than the end of business on the second regular work day after the verification. If, at the time of verification, local law enforcement officials determine that notification of the violent crime would hinder an ongoing investigation, the notification authorized by this subdivision shall be made within a reasonable period of time, to be determined by the local law enforcement agency and the school district. For purposes of this section an act that is considered a “violent crime” shall meet the definition of Section 67381 and be an act for which a pupil could or would be expelled pursuant to Section 48915.*

(2) *Nothing in this subdivision shall create any liability in a school district or its employees for complying with paragraph (1). (Emphasis added.)*

In using discretionary terms such as “may,” “if,” and “choose,” the plain language of these provisions indicates the principal is authorized but *not required* to verify that a report of violent crime has been filed or to send a notice to parents and school employees. Although the Senate Rules Committee analysis on the test claim statute states it is the author’s intent to *require* parents be notified when violent crime occurs at their children’s school site,<sup>57</sup> the Supreme Court has stated that when the terms of a statute are unambiguous, the court presumes lawmakers meant what they said and the plain meaning of the language governs.<sup>58</sup> Moreover, even where the statutory language is ambiguous and resort to legislative history is appropriate, legislative history must reflect the view of the Legislature as a whole.<sup>59</sup> The Supreme Court has thus said:

We have frequently stated ... that the statements of an individual legislator, including the author of a bill, are generally not considered in construing a statute,

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<sup>56</sup> Former Education Code section 35294.1, subdivision (e).

<sup>57</sup> Senate Rules Committee, Office of Senate Floor Analyses, Third Reading analysis of AB 2198, August 24, 2002, page 2.

<sup>58</sup> *Estate of Griswold, supra*, 25 Cal.4<sup>th</sup> 904, 911.

<sup>59</sup> *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal. App. 4<sup>th</sup> 26, 30.

as the court's task is to ascertain the intent of the Legislature as a whole in adopting a piece of legislation.<sup>60</sup>

Here, there is no other evidence that the intent of the Legislature was to *require* these activities of the school principal. Therefore, the Commission finds the activities set out in Education Code section 32281, subdivision (e), of verifying that a report of violent crime has been filed and sending a notice to parents and school employees that the crime occurred does not constitute a state-mandated new program or higher level of service within the meaning of article XIII B, section 6.

In summary, the Commission finds the following activities constitute a state-mandated new program or higher level of service on K-12 schools or districts:

1. The following activities, for incorporating into the comprehensive school safety plan a discrimination and harassment policy as required by Education Code section 32282, subdivision (a)(2)(E) (except to the extent a policy was previously required to address sexual harassment), and hate crime reporting procedures as required by Education Code section 32282, subdivision (a)(2)(J) (but only for the period of January 1, 2002, through October 6, 2005):
  - Write and develop a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan that is relevant to the needs and resources of that particular school. (Ed. Code § 32281, subd. (b)(1).)
  - Consult with a representative from a law enforcement agency in writing and developing a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan. (Ed. Code, § 32281, subd. (b)(3).)
  - Identify appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety with regard to a discrimination and harassment policy and hate crime reporting procedures. (Ed. Code, § 32282, subd. (a)(2).)
  - Consult, cooperate and coordinate with other school sites, where practical, in developing a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan. (Ed. Code, § 32282, subd. (d).)
  - Prior to adoption of the discrimination and harassment policy and hate crime reporting procedures, hold a public meeting at the schoolsite in order to allow members of the public the opportunity to express an opinion about the discrimination and harassment policy and hate crime reporting procedures to be included in the school safety plan. (Ed. Code, § 32288, subd. (b).)
  - Submit the safety plan with the new discrimination and harassment policy and hate crime reporting procedures, as written and updated, to the school district or county

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<sup>60</sup> *Ibid.*, citing *Quintano v. Mercury Casualty Co.* (1995) 11 Cal. 4<sup>th</sup> 1049, 1062.

office of education for approval, in order to ensure compliance with the school safety plan requirements. (Ed. Code, §§ 32282, subd. (f), 32288, subd. (a).)

- Review and update the discrimination and harassment policy and hate crime reporting procedures by March 1 every year. (Ed. Code, § 32286, subd. (a).)
2. For any comprehensive school safety plan being adopted, notify the following persons in writing of the public meeting held prior to adoption of the plan, pursuant to Education Code section 32288, subdivision (b)(2):
- the local mayor;
  - a representative of the local school employee organization;
  - a representative of each parent organization at the schoolsite, including the parent teacher association and parent teacher clubs;
  - a representative of each teacher organization at the schoolsite;
  - a representative of the student body government; and
  - all persons that have indicated they want to be notified.

**Issue 2: Do the test claim statutes impose costs mandated by the state within the meaning of Government Code section 17514 and article XIII B, section 6 of the California Constitution?**

For the test claim statutes to impose a reimbursable, state-mandated program, two additional elements must be satisfied. First, the statutes must impose “costs mandated by the state” pursuant to Government Code section 17514. Second, the statutory exceptions to reimbursement listed in Government Code section 17556 cannot apply.

Government Code section 17514 defines “costs mandated by the state” as any increased cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service. Claimant states that school districts have incurred or will incur costs in excess of \$1,000 per fiscal year to perform the claimed activities. Thus there is evidence in the record, signed under penalty of perjury, that the claimant has or will incur “costs mandated by the state.”

However, Education Code section 32282, subdivision (b), states the Legislature’s intent that the comprehensive school safety plan be developed using existing resources, as follows:

It is the intent of the Legislature that schools develop comprehensive school safety plans using existing resources, including the materials and services of the partnership, pursuant to this chapter. It is also the intent of the Legislature that schools use the handbook developed and distributed by the School/Law Enforcement Partnership Program entitled “Safe Schools: A Planning Guide for Action” in conjunction with developing their plan for school safety.

In 2003, the Second District Court of Appeal considered such legislative intent language in determining whether test claim statutes imposed “costs mandated by the state.” In *County of Los Angeles v. Commission on State Mandates* (2003) 110 Cal.App.4<sup>th</sup> 1176, the court addressed a newly required two-hour domestic violence training course for peace officers. The issue was whether the two-hour course could be incorporated into a pre-existing requirement

that peace officers obtain 24 hours of training every two years, and thus be accomplished using “existing resources” as intended by the Legislature. The court stated:

While we are mindful that legislative disclaimers, findings and budget control language are not determinative to a finding of a state mandated reimbursable program, (*Carmel Valley Fire Protection District v. State of California* (1987) 190 Cal.App.3d 521, 541, ...), our interpretation is supported by the hortatory statutory language [of the test claim statute] that, “The instruction required pursuant to this subdivision shall be funded from existing resources available for the training required pursuant to this section. It is the intent of the Legislature not to increase the annual training costs of local government.” Thus, while the County may lose some flexibility in tailoring its training programs, such loss of flexibility does not rise to the level of a state mandated reimbursable program because the loss of flexibility is incidental to the greater goal of providing domestic violence training. Every increase in cost that results from a new state directive does not automatically result in a valid subvention claim where, as here, the directive can be complied with by a minimal reallocation of resources within the entity seeking reimbursement. Thus, while there may be a mandate, there are no increased costs mandated by [the test claim statute].<sup>61</sup>

The Commission finds the principle set forth above in *County of Los Angeles* inapposite here. Education Code section 32282 does not reference existing *monetary* resources, but rather existing *informational* resources, based on the examples provided. The rule of statutory construction known as *ejusdem generis* applies here: i.e., where specific words follow general words, the application of the general term is restricted to those things that are similar to those which are enumerated specifically.<sup>62</sup> Reading Education Code section 32282, subdivision (d), in its proper context,<sup>63</sup> the Legislature’s intent was to have schools use the “existing resources” developed pursuant to the chapter of which section 32282 is a part, i.e., Chapter 2.5, entitled “Interagency School Safety Demonstration Act of 1985,” commencing with Education Code section 32260. That chapter established a School/Law Enforcement Partnership, comprised of the Superintendent of Public Instruction and the Attorney General, whose duties include developing programs and policies necessary to implement school safety plans, administration of safe school programs and all training, procedures, and activities conducted pursuant to the chapter, and cooperation with other states and state and federal agencies on matters relating to school safety.<sup>64</sup>

Therefore, the Commission finds the Legislative intent language from Education Code section 32282 does not preclude the Commission from finding the test claim statutes impose “costs mandated by the state.”

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<sup>61</sup> *County of Los Angeles v. Commission on State Mandates*, *supra*, 110 Cal.App.4<sup>th</sup> 1176, 1194-1195.

<sup>62</sup> *Martin v. Holiday Inns, Inc.* (1988) 199 Cal.App.3d 1434, 1437.

<sup>63</sup> *People v. Shabazz* (2006) 38 Cal.4th 55, 67.

<sup>64</sup> Education Code section 32262, subdivision (a).

With regard to the statutory exceptions, Government Code section 17556, subdivision (c), states in relevant part that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds:

The statute or executive order imposes a requirement that is mandated by a federal law or regulation and results in costs mandated by the federal government, unless the statute or executive order mandates costs that exceed the mandate in that federal law or regulation. This subdivision applies regardless of whether the federal law or regulation was enacted or adopted prior to or after the date on which the state statute or executive order was enacted or issued.

Here, the issue is whether the requirement to develop and adopt a discrimination and harassment policy, pursuant to Education Code section 35294.2, subdivision (a)(2)(E), is mandated by a federal law or regulation that results in costs mandated by the federal government. The California discrimination and harassment policy required by the test claim statute must be “consistent with the prohibition against discrimination contained in Chapter 2 (commencing with Section 200) of Part 1” of the Education Code. That chapter, entitled “Educational Equity,” addresses disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristic that is addressed in the definition of hate crime as set for the in Penal Code section 422.55.<sup>65</sup> Education Code section 201, subdivision (g), states the following legislative intent with regard to other state and federal programs:

It is the intent of the Legislature that this chapter shall be interpreted as consistent with Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Title VI of the federal Civil Rights Act of 1964 (42 U.S.C. Sec. 1981, et seq.), Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.), Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Sec. 794(a)), the federal Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), the federal Equal Educational Opportunities Act (20 U.S.C. Sec. 1791 et seq.), the Unruh Civil Rights Act (Secs. 51 to 53, incl., Civ. C.), and the Fair Employment and Housing Act (Pt. 2.8 (commencing with Sec. 12900), Div. 3, Gov. C.), except where this chapter may grant more protections or impose additional obligations, and that the remedies provided herein shall not be the exclusive remedies, but may be combined with remedies that may be provided by the above statutes.

Section 201 references several federal laws and regulations addressing and prohibiting discrimination on the basis of disability, gender, nationality, race or ethnicity, etc. However, there is no evidence in the record or in other law that a federal law or regulation has required K-12 schools to *adopt a discrimination and harassment policy* with regard to such discrimination. Therefore, the Commission finds that Government Code section 17556, subdivision (c), is inapplicable to deny the test claim.

Government Code section 17556, subdivision (e), states in relevant part that the Commission shall not find costs mandated by the state if, after a hearing, the Commission finds:

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<sup>65</sup> Education Code section 200.

The statute, executive order, or an appropriation in a Budget Act or other bill provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

In the *Comprehensive School Safety Plans* test claim (98-TC-01/99-TC-10), the Commission found that, among several grants available for school safety, only the Safe School Plans for New Schools Grant Program provided funding directly for *development* of comprehensive school safety plans. In that program, funds were available for new school sites to develop their safety plans when the following criteria were met: 1) newly constructed schools in their first year of operation or new schools that share sites but have separate administrative hierarchies; 2) school sites that have not yet developed a safety plan; and 3) school sites that have a new County District School code for calendar year 2000. The Commission found the grants did not completely fund all school sites or provide funding to all school districts, but did note that the Safe School Plans for New Schools Grant Program should be identified as possible offsetting revenues in the parameters and guidelines. This grant program should also be identified as possible offsetting revenues in the parameters and guidelines for this test claim beginning July 1, 2001, and until the grant program remained in effect.

In Statutes 2004, chapter 871 (AB 825), the Legislature consolidated several grant programs, including the Safety Plans for New Schools grant, into the School Safety Consolidated Competitive Grant program to commence in the 2005-06 fiscal year.<sup>66,67</sup> Allocations in the budget for this grant were \$16,381,000 for 2005-06, \$17,351 for 2006-07, and \$18,050 for 2007-08.<sup>68</sup> Nothing in this consolidated grant program, however, demonstrates that these funds are available to completely fund all school sites or provide funding to all districts for the new elements of the comprehensive school safety plan. This grant program should also be identified as offsetting revenues for this test claim beginning July 1, 2005.

Additional funding is available from the state for schoolsite councils. As noted above, the statutory scheme for comprehensive school safety plans provides that schoolsite councils established pursuant to Education Code sections 52012 or 52852 shall write and develop the school safety plan,<sup>69</sup> and in the absence of a schoolsite council the school safety planning committee assumes that responsibility.<sup>70</sup> Education Code section 32288, subdivision (b)(1), states that a schoolsite council or school safety planning committee, prior to adopting the school safety plan, shall hold a public meeting at the schoolsite to allow members of the public to comment on the plan. The test claim statutes added subdivision (b)(2) specifying particular parties that must be notified.

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<sup>66</sup> Education Code sections 41510 et seq.

<sup>67</sup> School Safety Consolidated Competitive Grant FAQs, last modified February 22, 2008, <http://www.cde.ca.gov/fg/aa/ce/faqssccg05.asp>.

<sup>68</sup> Line item 6110-248-001.

<sup>69</sup> Education Code section 32281, subdivision (b)(1).

<sup>70</sup> Education Code section 32281, subdivision (b)(4).

Education Code section 52012 established schoolsite councils for schools that participate in the school improvement program. That program was enacted as the Improvement of Elementary and Secondary Education by Statutes 1977, chapter 894. It became inoperative July 1, 2005, but was combined with the school library program into the categorical funding of the School and Library Improvement Block Grant, effective with the 2005/06 fiscal year, which continues to be funded.<sup>71</sup>

Education Code section 52852 established schoolsite councils for schools that participate in school-based coordinated categorical programs. Under this program, the schoolsite council is required to develop a school plan addressing various education-related issues, and establish an annual budget. The schoolsite council may apply for funds from various school funding sources to support the program.

Since the state provides funding for both of those schoolsite councils, the question here is whether such funding can be used to offset the costs for the newly mandated activities when it is the schoolsite council performing those activities, and whether those offsetting revenues are sufficient to cover those costs pursuant to Government Code section 17556, subdivision (e).

The Supreme Court, in *Kern High School District*, found the costs for providing notice of schoolsite council meetings to be payable from state funding already allocated to support schoolsite councils, and thus not reimbursable.<sup>72</sup> The administrative activities at issue were providing notices and posting agendas for meetings, pursuant to Education Code section 35147.<sup>73</sup> Section 35147 states in relevant part:

(b) The councils and schoolsite advisory committees established pursuant to Sections 52012, ... and 52852 ... are subject to this section.

(c) Any meeting held by a council or committee specified in subdivision (b) shall be open to the public and any member of the public shall be able to address the council or committee during the meeting on any item within the subject matter jurisdiction of the council or committee. Notice of the meeting shall be posted at the schoolsite, or other appropriate place accessible to the public at least 72 hours before the time set for the meeting. The notice shall specify the date, time, and location of the meeting and contain an agenda describing each item of business to be discussed or acted upon. ... (Emphasis added.)

The *Kern* court stated that the costs incurred in complying with the notice and agenda requirements under such a funded program “do not entitle claimants to obtain reimbursement under article XIII B, section 6, because the state, in providing program funds to claimants, already has provided funds that may be used to cover the necessary notice and agenda related expenses.”<sup>74</sup> In support of this finding, the court stated:

We note that, based upon the evaluations made by the Commission [on State Mandates], the costs associated with the notice and agenda requirements at issue

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<sup>71</sup> Statutes 2004, chapter 871; Education Code sections 41570 et seq.

<sup>72</sup> *Kern High School District, supra*, 30 Cal.4<sup>th</sup> 727, 746-747.

<sup>73</sup> *Id.* at 732.

<sup>74</sup> *Id.* at 746.

in this case appear rather modest. . . . And, even more significantly, we have found nothing to suggest that a school district is precluded from using a portion of the funds obtained from the state for the implementation of the underlying funded program to pay the associated notice and agenda costs.<sup>75</sup>

Although the court made this finding on a specific compulsory program, i.e., the Chacon-Moscone Bilingual-Bicultural Education program, additional information on the two schoolsite council programs at issue here was provided to the Supreme Court in letter briefs on the *Kern* case. The Supreme Court asked the parties to address the question of whether a school district is precluded from using a portion of the funds obtained from the state for implementation of any of the underlying funded programs at issue in the case to pay the associated notice and agenda costs. The Department of Justice, on behalf of the Department of Finance, concluded in its brief that the two schoolsite council programs at issue here — school improvement (Ed. Code §§ 52000 et seq.) and school-based program coordination (Ed. Code §§ 52850 et seq.) — are *not* precluded from using program funds for administrative purposes, including notice and agenda costs for public meetings. Nothing in *Kern*, or the record for this test claim, refutes this conclusion.

As noted above, the test claim statutes added a new administrative requirement in Education Code section 32288, subdivision (b)(2), that the schoolsite council or school safety planning committee notify specified parties of the public meeting being held to discuss a school safety plan prior to its adoption. Schoolsite councils under pre-existing law are required to provide notice for *any* public meeting they hold, pursuant to Education Code section 35147, and the Supreme Court in *Kern* found that those notice costs incurred by schoolsite councils are not reimbursable because such administrative costs are offset by state program funding. The newly established requirement to provide notice of the public meeting *to specified parties* as established in the test claim statutes is, in fact, only a slight variation on the basic notice activity required of schoolsite councils that was specifically addressed in *Kern*.

Accordingly, the Commission finds that any costs incurred *by schoolsite councils* for the additional notice requirements established under subdivision (b)(2) of Education Code section 32288 are not reimbursable pursuant to Government Code section 17556, subdivision (e), since the schoolsite council can use program funds to offset those administrative costs. However, if the *school safety planning committee* incurs costs associated with providing the specified notice, the Commission finds Government Code section 17556, subdivision (e), is not applicable to deny reimbursement.

Since *Kern* did not address the new activities of writing, developing and adopting the new elements of comprehensive school safety plans pursuant to Education Code section 32282, subdivisions (a)(2)(E) and (a)(2)(J), i.e., a discrimination and harassment policy and hate crime reporting procedures, it may not be similarly concluded that schoolsite council funding completely offsets the costs for a schoolsite council to perform those tasks. Therefore, Government Code section 17556, subdivision (e), is not applicable to deny reimbursement for those activities.

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<sup>75</sup> *Ibid.*



Nevertheless, any grant funds or funds available to schoolsite councils for the newly mandated activities in this test claim shall be identified in the parameters and guidelines as possible offsetting revenues.

## **Conclusion**

The Commission concludes that the following activities constitute a reimbursable state-mandated new program or higher level of service on K-12 school districts and schools:

1. The following activities, for incorporating a discrimination and harassment policy as required by Education Code section 32282, subdivision (a)(2)(E) (except to the extent a policy was previously required to address sexual harassment), and hate crime reporting procedures as required by Education Code section 32282, subdivision (a)(2)(J) (but only for the period of January 1, 2002, through October 6, 2005):
  - Write and develop a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan that is relevant to the needs and resources of that particular school. (Ed. Code § 32281, subd. (b)(1).)
  - Consult with a representative from a law enforcement agency in writing and developing a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan. (Ed. Code, § 32281, subd. (b)(3).)
  - Identify appropriate strategies and programs that will provide or maintain a high level of school safety and address the school's procedures for complying with existing laws related to school safety with regard to a discrimination and harassment policy and hate crime reporting procedures. (Ed. Code, § 32282, subd. (a)(2).)
  - Consult, cooperate and coordinate with other school sites, where practical, in developing a discrimination and harassment policy and hate crime reporting procedures for inclusion in the school safety plan. (Ed. Code, § 32282, subd. (d).)
  - Hold a public meeting at the schoolsite in order to allow members of the public the opportunity to express an opinion about the discrimination and harassment policy and hate crime reporting procedures to be included in the school safety plan. (Ed. Code, § 32288, subd. (b).)
  - Submit the safety plan with the new discrimination and harassment policy and hate crime reporting procedures, as written and updated, to the school district or county office of education for approval, in order to ensure compliance with the school safety plan requirements. (Ed. Code, §§ 32282, subd. (f), 32288, subd. (a).)
  - Review and update the discrimination and harassment policy and hate crime reporting procedures by March 1 every year. (Ed. Code, § 32286, subd. (a).)
2. For any comprehensive school safety plan being adopted, notify the following persons in writing of the public meeting held prior to adoption of the plan, pursuant to Education Code section 32288, subdivision (b)(2), but only when the school safety planning committee established pursuant to Education Code section 32281, subdivisions (b)(2) or (b)(4), is providing such notice:

- the local mayor;
- a representative of the local school employee organization;
- a representative of each parent organization at the schoolsite, including the parent teacher association and parent teacher clubs;
- a representative of each teacher organization at the schoolsite;
- a representative of the student body government; and
- all persons that have indicated they want to be notified.

For the reasons stated above, the Commission further concludes that neither Education Code section 32286, subdivision (a), nor Education Code section 32281, subdivision (e), nor any of the other test claim statutes that were pled, constitute a state-mandated new program or higher level of service subject to article XIII B, section 6 of the California Constitution.

Any funds available to schoolsite councils or any other grant funds for the newly mandated activities in this test claim shall be identified in the parameters and guidelines as possible offsetting revenues, including but not limited to the following funds:

- Safe School Plans for New Schools Grant Program;
- School Safety Consolidated Competitive Grant Program;
- School and Library Improvement Block Grant and any other funds previously available for schoolsite councils established under Education Code section 52012; and
- Any funds available for schoolsite councils established under Education Code section 52852.