ITEM 11

TEST CLAIM
FINAL STAFF ANALYSIS

Penal Code Sections 273a, 11164, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.12, 11165.14, 11166, 11166.2, 11166.5, 11168, 11169, 11170, and 11174.3,
Including Former Penal Code Sections 11161.5, 11161.6, 11161.7

Statutes 1975, Chapter 226
Statutes 1976, Chapters 242 and 1139
Statutes 1977, Chapter 958
Statutes 1978, Chapter 136
Statutes 1979, Chapter 373
Statutes 1980, Chapters 855, 1071 and 1117
Statutes 1981, Chapters 29 and 435
Statutes 1982, Chapters 162 and 905
Statutes 1984, Chapters 1170, 1391, 1423, 1613, and 1718
Statutes 1985, Chapters 189, 464, 1068, 1420, 1528, 1572 and 1598
Statutes 1986, Chapters 248, 1289, and 1496
Statutes 1987, Chapters 82, 531, 640, 1020, 1418, 1444 and 1459
Statutes 1988, Chapters 39, 269, 1497, and 1580
Statutes 1989, Chapter 153
Statutes 1990, Chapters 650, 931, 1330, 1363, and 1603
Statutes 1991, Chapters 132 and 1102
Statutes 1992, Chapter 459
Statutes 1993, Chapters 219, 346, 510 and 1253
Statutes 1994, Chapter 1263
Statutes 1996, Chapters 1080, 1081 and 1090
Statutes 1997, Chapters 83, 134, 842, 843, and 844
Statutes 1998, Chapter 311
Statutes 1999, Chapters 475 and 1012
Statutes 2000, Chapters 287 and 916
Statutes 2001, Chapters 133 and 754

Child Abuse and Neglect Reporting (01-TC-21)
Consolidated with
Interagency Child Abuse and Neglect (ICAN) Investigative Reports (00-TC-22)

San Bernardino Community College District, Claimant

EXECUTIVE SUMMARY

This test claim alleges that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program on K-12 school districts and community college

districts. Declarations of costs have been filed by the claimant and San Jose Unified School District.

Background

This test claim was filed in addition to a separate test claim on *Interagency Child Abuse and Neglect Investigation Reports* (*ICAN*, 00-TC-22) by the County of Los Angeles on many of the same statutes, regarding the activities alleged to be required of city and county law enforcement, county welfare, and related departments. On September 7, 2007, the claimant here, San Bernardino Community College District, filed interested party comments on the draft staff analysis for the *ICAN* test claim, 00-TC-22, requesting that the findings for that test claim apply to "all police departments and law enforcement agencies," including school district and community college district police departments. At that time, litigation was pending in the Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates* (addressing *Peace Officer Procedural Bill of Rights*), on the state mandate issue for school district and community college district police departments. Thus, the Department of Finance requested that the Commission postpone ruling on the state mandate issue for school districts in the *ICAN* (00-TC-22) test claim until after the litigation became final. The Department's request was granted, and the test claim statutes and executive orders pled in *ICAN* (00-TC-22) that apply to school district and community college district police departments were severed from *ICAN* (00-TC-22) and are now consolidated with this test claim.[1]

On February 6, 2009, the Third District Court of Appeal issued a published decision in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, finding that school districts and community college districts are not mandated by the state to hire peace officers and establish police departments and, thus, were not entitled to reimbursement under article XIII B, section 6 of the California Constitution for the costs of complying with the *Peace Officer Procedural Bill of Rights* program. The court's decision became final on March 19, 2009.

Analysis

Staff finds that the state has not mandated school district or community college district "police or security departments" and "law enforcement agencies" to comply with the child abuse and neglect reporting requirements imposed on the police departments and law enforcement agencies of cities and counties. Staff further finds that many of the test claim statutes do not impose mandatory new duties on school districts and community college districts.

Staff finds, however, two new mandated activities alleged that are not required by prior law, thus mandating a new program or higher level of service for K-12 school districts, as described below.

Conclusion

Staff concludes that Penal Code sections 11165.7 and 11174.3, as added or amended by Statutes 1987, chapters 640 and 1459, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1998, chapter 311, Statutes 2000, chapter 916, and Statutes 2001, chapters 133 and 754; mandate new programs or higher levels of service for K-12 school districts within the meaning

[1] On December 6, 2007, the Commission adopted the Statement of Decision in *ICAN* (00-TC-22), approving the claim for local agency police and sheriff's departments, welfare departments, probation departments, and district attorney's offices. (Exhibit K.)

of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- Reporting to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws. (Pen. Code, § 11165.7, subd. (d).)
- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

  > The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. (Pen. Code, § 11174.3, subd. (a).)

The period of reimbursement for these activities begins July 1, 2000.

Staff further concludes that the test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim for K-12 school districts.

STAFF ANALYSIS

Claimant

San Bernardino Community College District

Chronology

06/28/02	Claimant files the test claim with the Commission on State Mandates (Commission)
07/08/02	Commission staff issues the completeness review letter and requests comments from state agencies
08/02/02	Department of Finance (DOF) requests an extension of time for filing comments for 120 days, to consult with the Office of the Attorney General
08/05/02	Commission staff grants a 90-day extension to November 5, 2002
08/08/02	Department of Social Services (DSS) requests an extension of time to November 26, 2002
08/12/02	Commission staff grants the extension of time as requested
10/21/02	DOF files letter confirming that they also have an extension of time to file comments until November 26, 2002
11/25/02	DSS files comments on the test claim
11/26/02	DOF files comments on the test claim
12/26/02	Claimant files rebuttal to comments by DOF
12/31/02	Commission staff issues a request to the claimant for a response to the state agency comments
01/17/03	Claimant submits response to the Commission's request, responding to the DSS comments and referring to earlier response to DOF's comments
08/14/07	Draft staff analysis on separate, but related test claim, *Interagency Child Abuse and Neglect Investigation Reports* (*ICAN*, 00-TC-22), filed by the County of Los Angeles issued
09/07/07	San Bernardino Community College District files interested party comments on the *ICAN* draft staff analysis (00-TC-22) requesting that the findings apply to "all police departments and law enforcement agencies," including school district and community college district police departments
09/12/07	Commission staff requests comments from the California Community Colleges
10/17/07	Commission staff issues the draft staff analysis on the test claim
11/08/07	Claimant files comments on the draft staff analysis
11/20/07	Final staff analysis issued for the December 6, 2007 Commission hearing
11/21/07	Final staff analysis issued for the December 6, 2007 Commission hearing on the *ICAN* test claim (00-TC-22), which included an analysis and staff recommendation on school district and community college district police departments

12/03/07	Department of Finance requests postponement of hearing on *ICAN* (00-TC-22) on the ground that the state mandate issue involving school district and community college district police departments was pending in the Third District Court of Appeal in *Department of Finance v. Commission on State Mandates*, Case No. C056833
12/05/07	Commission approves Department of Finance's request for postponement of the *ICAN* test claim (00-TC-22) for those portions of the claim related to the adjudication in *Department of Finance v. Commission on State Mandates*, Third District Court of Appeal, Case No. C056833. The test claim statutes and executive orders pled in *ICAN* (00-TC-22) that apply to school district and community college district police departments are severed from *ICAN* (00-TC-22) and consolidated with this claim (*Child Abuse and Neglect Reporting*, 01-TC-21). The hearing on the consolidated test claim (00-TC-22 and 01-TC-21) is postponed until after the final adjudication in the *Department of Finance v. Commission on State Mandates* case
12/06/07	Statement of Decision adopted in *ICAN* (00-TC-22) with respect to local agency claims
02/06/09	Third District Court of Appeal issues published decision in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355. Decision becomes final on March 19, 2009
05/22/09	Revised draft staff analysis issued on consolidated test claim (00-TC-22, 01-TC-21)
06/25/09	Claimant files comments, dated June 22, 2009, on the revised draft staff analysis

Background

This test claim alleges that amendments to California's mandatory child abuse reporting laws impose a reimbursable state-mandated program on school districts and community college districts.

A separate test claim, *Interagency Child Abuse and Neglect Investigation Reports* (*ICAN*, 00-TC-22), was filed by the County of Los Angeles on many of the same statutes, regarding the activities alleged to be required of law enforcement, county welfare, and related departments. San Bernardino Community College District filed interested party comments on the draft staff analysis for the *ICAN* test claim, 00-TC-22, on September 7, 2007, requesting that the findings for that test claim apply to "all police departments and law enforcement agencies," including school district and community college district police departments. At that time, litigation was pending in the Third District Court of Appeal, in *Department of Finance v. Commission on State Mandates* (addressing *Peace Officer Procedural Bill of Rights*), on the state mandate issue for school district and community college district police departments. Thus, the Department of Finance requested that the Commission postpone ruling on the state mandate issue for school districts in the *ICAN* (00-TC-22) test claim until after the litigation became final. The Department's request was granted, and the test claim statutes and executive orders pled in

ICAN (00-TC-22) that apply to school district and community college district police departments were severed from *ICAN* (00-TC-22) and consolidated with this test claim.[2]

On February 6, 2009, the Third District Court of Appeal issued a published decision in *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355, finding that school districts and community college districts are not mandated by the state to hire peace officers and establish police departments and, thus, were not entitled to reimbursement under article XIII B, section 6 of the California Constitution for the costs of complying with the *Peace Officer Procedural Bill of Rights* program. The court's decision became final on March 19, 2009.[3]

Test Claim Statutes

A child abuse reporting law was first added to the Penal Code in 1963, and initially required medical professionals to report suspected child abuse to local law enforcement or child welfare authorities. The law was regularly expanded to include more professions required to report suspected child abuse (now termed "mandated reporters"), and in 1980, California reenacted and substantively amended the law, entitling it the "Child Abuse and Neglect Reporting Act," or "CANRA."

The court in *Planned Parenthood Affiliates v. Van de Kamp* (1986) 181 Cal.App.3d 245, pages 258-260, provides an overview of the complete Child Abuse and Neglect Reporting Act, following the 1980 reenactment at Penal Code section 11164 et seq. (footnotes omitted):

> The law is designed to bring the child abuser to justice and to protect the innocent and powerless abuse victim. (See Comment, *Reporting Child Abuse: When Moral Obligations Fail* (1983) 15 Pacific L.J. 189.) The reporting law imposes a mandatory reporting requirement on individuals whose professions bring them into contact with children. (*Id.*, at pp. 189-190.) Physical abuse, sexual abuse, willful cruelty, unlawful corporal punishment and neglect must be reported.
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> ¶…¶
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> The reporting law applies to three broadly defined groups of professionals: "health practitioners," child care custodians, and employees of a child protective agency. "Health practitioners" is a broad category subdivided into "medical" and "nonmedical" practitioners, and encompasses a wide variety of healing professionals, including physicians, nurses, and family and child counselors. (§§ 11165, subds. (i), (j); 11165.2.) "Child care custodians" include teachers, day care workers, and a variety of public health and educational professionals. (§§ 11165, subd. (h); 11165.1 [first of two identically numbered sections]; 11165.5.) Employees of "child protective agencies" consist of police and sheriff's officers, welfare department employees and county probation officers. (§ 11165, subd. (k).)

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[2] On December 6, 2007, the Commission adopted the Statement of Decision in *ICAN* (00-TC-22), approving the claim for local agency police and sheriff's departments, welfare departments, probation departments, and district attorney's offices. (Exhibit K.)

[3] Exhibit N.

The Legislature acknowledged the need to distinguish between instances of abuse and those of legitimate parental control. "[T]he Legislature recognizes that the reporting of child abuse ... involves a delicate balance between the right of parents to control and raise their own children by imposing reasonable discipline and the social interest in the protection and safety of the child ... . [I]t is the intent of the Legislature to require the reporting of child abuse which is of a serious nature and is not conduct which constitutes reasonable parental discipline." (Stats. 1980, ch. 1071, § 5, p. 3425.)

To strike the "delicate balance" between child protection and parental rights, the Legislature relies on the judgment and experience of the trained professional to distinguish between abusive and nonabusive situations. "[A]ny child care custodian, medical practitioner, nonmedical practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment *whom he or she knows or reasonably suspects has been the victim of child abuse* shall report the known or suspected instance of child abuse to a child protective agency .... '[R]easonable suspicion' means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, *drawing when appropriate on his or her training and experience*, to suspect child abuse." (§ 11166, subd. (a), italics added.) As one commentator has observed, "[t]he occupational categories ... are presumed to be uniquely qualified to make informed judgments when suspected abuse is not blatant." (See Comment, *Reporting Child Abuse: When Moral Obligations Fail, supra.*, 15 Pacific L.J. at p. 214, fn. omitted.)

The mandatory child abuse report must be made to a "child protective agency," i.e., a police or sheriff's department or a county probation or welfare department. The professional must make the report "immediately or as soon as practically possible by telephone." The professional then has 36 hours in which to prepare and transmit to the agency a written report, using a form supplied by the Department of Justice. The telephone and the written reports must include the name of the minor, his or her present location, and the information that led the reporter to suspect child abuse. (§§ 11166, subd. (a); 11167, subd. (a); 11168.) Failure to make a required report is a misdemeanor, carrying a maximum punishment of six months in jail and a $1,000 fine. (§ 11172, subd. (e).)

The child protective agency receiving the initial report must share the report with all its counterpart child protective agencies by means of a system of cross-reporting. An initial report to a probation or welfare department is shared with the local police or sheriff's department, and vice versa. Reports are cross-reported in almost all cases to the office of the district attorney. (§ 11166, subd. (g).) Initial reports are confidential, but may be disclosed to anyone involved with the current investigation and prosecution of the child abuse claim, including the district attorney who has requested notification of any information relevant to the reported instance of abuse. (§ 11167.5.)

A child protective agency receiving the initial child abuse report then conducts an investigation. The Legislature intends an investigation be conducted on every report received. The investigation should include a determination of the "person

or persons apparently responsible for the abuse." (Stats. 1980, ch. 1071, § 5, pp. 3425-3426.) Once the child protective agency conducts an "active investigation" of a report and determines that it is "not unfounded," the agency must forward a written report to the Department of Justice, on forms provided by the department. (§§ 11168, 11169.) An "unfounded" report is one "which is determined by a child protective agency investigator to be false, to be inherently improbable, to involve an accidental injury, or not to constitute child abuse as defined in Section 11165." (§ 11165.6, subd. (c)(2).)

The Department of Justice retains the reports in a statewide index, a computerized data bank known as the "Child Abuse Central Registry," which is to be continually updated and "shall not contain any reports that are determined to be unfounded." (§ 11170, subd. (a).) If a child protective agency subsequently determines that a report is "unfounded," it must so inform the Department of Justice who shall remove the report from its files. (§ 11169.)

The reports in the registry are not public documents, but may be released to a number of individuals and government agencies. Principally, the information may be released to an investigator from the child protective agency currently investigating the reported case of actual or suspected abuse or to a district attorney who has requested notification of a suspected child abuse case. Past reports involving the same minor are also disclosable to the child protective agency and the district attorney involved or interested in a current report under investigation. In addition, future reports involving the same minor will cause release of all past reports to the investigating law enforcement agencies. (§§ 11167.5, subd. (b)(1); 11167, subd. (c); 11170, subd. (b)(1).)[4]

Claimant's Position

San Bernardino Community College District's June 28, 2002[5] test claim filing alleges that amendments to child abuse reporting statutes since January 1, 1975, have resulted in reimbursable increased costs mandated by the state. The test claim narrative and declarations allege new activities for school districts, county offices of education, and community college districts, as follows:[6]

- Mandated reporting of known or suspected child abuse to a police or sheriff's department, or to the county welfare department, as soon as practicable by telephone, and in writing within 36 hours. (Pen. Code, §§ 11165.9 and 11166, subd. (a).) "All mandated reporters are further compelled to report incidents of child abuse or neglect by the fact that failure to do so is a misdemeanor, pursuant to Penal Code Section 11166, Subdivision (b)."
- Mandated reports "are required to be made on forms adopted by the Department of Justice" (Pen. Code, § 11168.)

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[4] Exhibit N.

[5] The potential reimbursement period begins no earlier than July 1, 2000, based upon the filing date for this test claim. (Gov. Code, § 17557.)

[6] Test claim filing, pages 122-124, Exhibit A.

- "To assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site." (Pen. Code, § 11165.14.)
- "To notify the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests." (Pen. Code, § 11174.3.)
- "To either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided." (Pen. Code, § 11165.7, subd. (d).)
- "When training their mandated reporters in child abuse or neglect reporting, to supply those trainees with a written copy of their reporting requirements and a written disclosure of their confidentiality rights." (Pen. Code, § 11165.7, subd. (c).)
- "To obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their agreement to perform those duties." (Pen. Code, § 11166.5.)
- The claimant also requests reimbursement for all the activities required of "police departments" and "law enforcement agencies," including school district and community college district police.

The filing includes a declaration from the San Bernardino Community College District Chair of Child Development and Family and Consumer Science, and a declaration from the San Jose Unified School District, Director of Student Services, stating that each of the districts have incurred unreimbursed costs for the above activities.

The claimant rebutted the state agency comments on the test claim filing in separate letters dated December 19, 2002 (responding to DOF),[7] and January 17, 2003 (responding to DSS).[8] The claimant filed comments on the draft staff analysis dated November 7, 2007,[9] and the revised draft staff analysis dated June, 22, 2009.[10] The claimant's substantive arguments will be addressed in the analysis below.[11]

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[7] Exhibit D.

[8] Exhibit E.

[9] Exhibit G.

[10] Exhibit M.

[11] In comments dated December 19, 2002, and June 22, 2009, the claimant argues that the comments of the Department of Finance are "incompetent" and should be stricken from the record since they do not comply with the Commission's regulations, California Code of Regulations, title 2, section 1183.02, subdivision (d). That regulation requires written responses to be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge, information, or belief. The claimant contends that "DOF's comments do not comply with this essential requirement."

The Department of Finance filed comments on November 26, 2002, that were prepared by the Attorney General's Office. It is correctly stated that the comments are not signed under penalty of perjury. However, the comments present legal arguments objecting to the test claim on

Department of Finance Position

In comments filed November 26, 2002, DOF alleges the test claim does not meet basic test claim filing standards, and "requests that the Commission reject the claim for failure to comply with the specificity requirement in 2 CCR section 1183(e)."[12] Further, DOF argues that the claim should be denied, because:

> [T]he District fails to point to any provision of law or regulation that defines a community college district as a mandated reporter within the meaning of Penal Code section 11165.7. While several versions of this section mention teachers and various school district employees, none of the enactments of this section include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.) …
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> As a final matter, the Department moves to strike the declaration of … Director of Student Services at the San Jose Unified School District [because the statements] do not authenticate the factual assertions made by the claimant, as required by 2 CCR section 1183(e)(4). The declaration is therefore irrelevant to the mandate claim submitted by the San Bernardino Community College District.

Department of Social Services Position

DSS's comments on the test claim filing, submitted November 25, 2002, also argue that the test claim as submitted fails "to set forth clearly and precisely which specific statutory provisions, enacted on or after 1975, imposed new mandates on local government, as required by Title 2, California Code of Regulations (CCR), section 1183(e)."[13]

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procedural and substantive grounds, and do *not* contain factual assertions, which require documentary evidence of the facts alleged that are authenticated by declarations signed under penalty of perjury in order to establish the existence and validity of the facts alleged. (Cal. Code Regs, tit. 2, § 1183.02, subd. (c).) The Commission has no authority to strike a party's comments that present legal argument regarding the existence of a reimbursable state-mandated program. (See also, Gov. Code, § 11125.7 of the Bagley-Keene Open Meetings Act, which requires the Commission to provide an opportunity to address the Commission on each agenda item.) Thus, the Department of Finance's legal argument is included and analyzed in this claim.

[12] Exhibit C.

[13] Exhibit B. Both DSS and DOF challenge the sufficiency and specificity of the test claim. However, at the time of the test claim filing on June 28, 2002, section 1183, subdivision (e), of the Commission regulations required the following content for an acceptable filing:

> All test claims, or amendments thereto, shall be filed on a form provided by the commission [and] shall contain at least the following elements and documents:
>
> (1) A copy of the statute or executive order alleged to contain or impact the mandate. The specific sections of chaptered bill or executive order alleged must be identified.

The regulation also required copies of all "relevant portions of" law and "[t]he specific chapters, articles, sections, or page numbers must be identified," as well as a detailed narrative describing

DSS also challenges the claim on several substantive points including: arguing that Penal Code section 11165.14 does not impose a duty on its face to cooperate and assist law enforcement agencies, as pled; and the duty of a staff member to be present at the interview of a suspected victim, upon request, pursuant to Penal Code section 11174.3, is voluntary which "negates the mandate claim." In addition, DSS asserts that the training of mandated reporters "is optional, and can be avoided if it reports to the State Department of Education why such training was not provided [and] the report can be transmitted orally or electronically, at no or de minimis cost to Claimant."

Discussion

The courts have found that article XIII B, section 6, of the California Constitution[14] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[15] "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."[16] 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.[17] 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.[18]

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.[19] To determine if the

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the prior law and the new program or higher level of service alleged. The test claim was deemed complete on July 8, 2002. Thus, the Commission has jurisdiction over the statutes and code sections listed on the test claim title page and described in the narrative, and each will be analyzed below for the imposition of a reimbursable state mandated program.

[14] Article XIII B, section 6, subdivision (a), provides: (a) 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.

[15] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

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

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

[18] *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 Dist. v. Honig* (1988) 44 Cal.3d 830, 835 *(Lucia Mar).*

[19] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; see also *Lucia Mar, supra,*

program is new or imposes a higher level of service, the test claim statutes and executive orders must be compared with the legal requirements in effect immediately before the enactment.[20] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[21]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[22]

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.[23] 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."[24]

Issue 1: Is a community college district an eligible test claimant under the test claim statutes?

The Department of Finance contends that the claimant, as a community college district, is not a proper party to the claim because "[w]hile several versions of this section mention teachers and various school district employees, none of the enactments of this section include employees of community college districts in the definition of mandated reporter. While community colleges are part of the public school system, community college districts are legal entities separate and distinct from school districts. (Education Code §§ 66700, 68012.)"

Staff finds that the term "teachers," as used in the Child Abuse and Neglect Reporting Act, is inclusive of community college district teachers. The term is deliberately broad as it is used in the statutory list of mandated reporters. That list is currently found at Penal Code section 11165.7, and begins:

> (a) As used in this article, "mandated reporter" is defined as any of the following:
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> (1) A teacher.
> (2) An instructional aide.
> (3) A teacher's aide or teacher's assistant employed by any public or private school.
> (4) A classified employee of any public school.

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44 Cal.3d 830, 835.)

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

[21] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[22] *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.

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

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

> (5) An administrative officer or supervisor of child welfare and attendance, or a certificated pupil personnel employee of any public or private school. …

An Attorney General Opinion (72 Ops.Cal.Atty.Gen. 216 (1989)) analyzed the wording of earlier versions of the statutory scheme to find that a ballet teacher at a post-secondary private school in San Francisco was included in the meaning of the word "teacher," as used in CANRA, when the school admitted students as young as eight years old.[25] The opinion goes into great detail using statutory construction to deduce the legislative meaning of the word "teacher" in this context. Finding that the word "teacher" is now singled out in the statute without any qualification, the opinion reaches the following conclusion:

> Without intending to suggest that the meaning of the word "teacher" as found in the Act is without bounds and mandates a reporting duty on any person who happens to impart some knowledge or skill to a child, we do not accept the proffered limitation that it applies only to teachers in K-12 schools. We find nothing in the statutory language of the Child Abuse and Neglect Reporting Act to support such a limitation on the plain meaning of the word "teacher".
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> ¶ … ¶
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> The Child Abuse and Neglect Reporting Act imposes a duty on "teachers" to report instances of child abuse that they come to know about or suspect in the course of their professional contact in order that child protective agencies might take appropriate action to protect the children. We are constrained to interpret the language of the Act according to the ordinary meaning of its terms to effect that purpose. Doing so, we conclude that a person who teaches ballet at a private ballet school is a "teacher" and thus a "child care custodian" as defined by the Act, and therefore has a mandatory duty to report instances of child abuse under it.

The term "teacher" is applied to community college instructors elsewhere in the Penal Code, and in case law.[26] CANRA is aimed at the protection of individuals under the age of 18 from child abuse and neglect;[27] therefore it is significant that community colleges are required to serve some students under 18 years old. Education Code section 76000 provides that "a community college district shall admit to the community college any California resident … possessing a high school diploma or the equivalent thereof." Education Code section 48412 requires that the proficiency exams be offered to any students "16 years of age or older," who has or will have completed 10th grade, and "shall award a "certificate of proficiency" to persons who demonstrate that proficiency. The certificate shall be equivalent to a high school diploma." Thus 16 and 17 year olds can be regular students at community colleges.

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[25] "An opinion of the Attorney General "is not a mere 'advisory' opinion, but a statement which, although not binding on the judiciary, must be 'regarded as having a quasi judicial character and [is] entitled to great respect,' and given great weight by the courts." (*Community Redevelopment Agency of City of Los Angeles v. County of Los Angeles* (2001) 89 Cal.App.4th 719, 727.) (Exhibit N.)

[26] For examples, see Penal Code section 291.5 and *Compton Community College etc. Teachers v. Compton Community College Dist.* (1985) 165 Cal.App.3d 82 (Exhibit N).

[27] Penal Code sections 11164 and 11165.

Therefore, staff finds that a community college district is an eligible test claimant under the test claim statutes, as some of the claimed activities apply to employers of mandated reporters, including teachers. However, the issue of community college districts being "school districts" within the meaning of CANRA is more complex, and will be analyzed as the term appears in the test claim statutes below.

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

A test claim statute or executive order mandates a new program or higher level of service within an existing program when it compels a local agency or school district to perform activities not previously required, or when legislation requires that costs previously borne by the state are now to be paid by school districts.[28] Thus, in order for a test claim statute to be subject to article XIII B, section 6 of the California Constitution, the statutory language must order or command that school districts perform an activity or task.

The test claim allegations will be analyzed by areas of activities, as follows: (a) duties imposed on school district and community college district "police departments" and "law enforcement agencies;" (b) mandated reporting of child abuse and neglect; (c) training mandated reporters; (d) investigation of suspected child abuse involving a school site or a school employee; (e) employee records.

(A) Duties Imposed on School District and Community College District "Police Departments" and "Law Enforcement Agencies"

The claimant contends that the activities required by the test claim statutes of "police departments" and "law enforcement agencies" constitute state-mandated duties for school district and community college district police and that such duties are reimbursable under article XIII B, section 6 of the California Constitution.

Activities performed by "any police department …" not including "a school district police or security department"

Penal Code section 11165.9 requires that mandated reports of suspected child abuse or neglect shall be made to:

> *any police department*, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. *It does not include a school district police or security department*. (Emphasis added.)

This definition is also cross-referenced throughout the Child Abuse and Neglect Reporting Act, delineating the local departments responsible for particular follow-up reporting activities and investigation. For example, the Act requires "any police department …" (not including a school district police or security department) to also perform the following activities:

- Distribute the child abuse reporting form adopted by the Department of Justice (currently known as the "Suspected Child Abuse Report" Form SS 8572) to mandated reporters. (Pen. Code, § 11168, formerly § 11161.7.)

[28] *Lucia Mar Unified School Dist., supra*, 44 Cal.3d 830, 836.

- Transfer a call electronically or immediately refer the case by telephone, fax, or electronic transmission, to any agency with proper jurisdiction, whenever the department lacks subject matter or geographical jurisdiction over an incoming report of suspected child abuse or neglect. (Pen. Code, § 11165.9.)
- Report by telephone immediately or as soon as practically possible to the appropriate licensing agency every known or suspected instance of child abuse or neglect when the instance of abuse or neglect occurs while the child is being cared for in a child day care facility, involves a child day care licensed staff person, or occurs while the child is under the supervision of a community care facility or involves a community care facility licensee or staff person. The agency shall also send, fax, or electronically transmit a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. The agency shall send the licensing agency a copy of its investigation report and any other pertinent materials. (Pen. Code, § 11166.2.)
- Complete an investigation to determine whether a report of suspected child abuse or severe neglect is unfounded, substantiated or inconclusive, as defined in Penal Code section 11165.12 for purposes of preparing or submitting the state "Child Abuse Investigation Report" Form SS 8583. or subsequent designated form, to the Department of Justice. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)
- Forward to the Department of Justice a report in writing of every case it investigates of known or suspected child abuse or severe neglect which is determined to be substantiated or inconclusive, as defined in Penal Code section 11165.12. Unfounded reports, as defined in Penal Code section 11165.12, shall not be filed with the Department of Justice. If a report has previously been filed which subsequently proves to be unfounded, the Department of Justice shall be notified in writing of that fact. The reports required by this section shall be in a form approved by the Department of Justice and may be sent by fax or electronic transmission. (Pen. Code, § 11169, subd. (a); Cal. Code Regs., tit. 11, § 903, "Child Abuse Investigation Report" Form SS 8583.)
- Notify in writing the known or suspected child abuser that he or she has been reported to the Child Abuse Central Index, in any form approved by the Department of Justice, at the time the "Child Abuse Investigation Report" is filed with the Department of Justice. (Pen. Code, § 11169, subd. (b).)
- Make relevant information available, when received from the Department of Justice, to the child custodian, guardian ad litem appointed under section 326, or counsel appointed under section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she is treating or investigating a case of known or suspected child abuse or severe neglect. (Pen. Code, § 11170, subd. (b)(1).)
- Inform the mandated reporter of the results of the investigation and of any action the agency is taking with regard to the child or family, upon completion of the child abuse investigation or after there has been a final disposition in the matter. (Pen. Code, § 11170, subd. (b)(2).)
- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect

investigation reports contained in the index from the Department of Justice when investigating a home for the placement of dependant children. The notification shall include the name of the reporting agency and the date of the report. (Pen. Code, § 11170, subd. (b)(5), now subd. (b)(6).)

- Obtain the original investigative report from the reporting agency, and draw independent conclusions regarding the quality of the evidence disclosed, and its sufficiency for making decisions regarding investigation, prosecution, licensing, or placement of a child, when a report is received from the Child Abuse Central Index. (Pen. Code, § 11170, subd. (b)(6)(A), now (b)(8)(A).)
- Retain child abuse or neglect investigative reports that result in a report filed with the Department of Justice for a minimum of 10 years. If a subsequent report on the same suspected child abuser is received within the first 10-year period, the report shall be maintained for an additional 10 years. (Pen. Code, §§ 11169, subd. (c); 11170, subd. (a)(3).)

The plain language of Penal Code section 11165.9 states that "school district police or security departments" are not required to perform the activities listed above. This is true of current law,[29] as well as prior law. Former Penal Code section 11165.9, added by Statutes 1987, chapter 1459, stated "as used in this article, "child protective agency" means a police or sheriff's department, a county probation department, or a county welfare department. *It does not include a school district police or security department.*" [Emphasis added.]

However, there must be a determination of what is meant by "school district police or security departments" in the context of Penal Code section 11165.9 – specifically, did the Legislature intend that community college districts be included in this term? "School district" has been defined elsewhere in the California codes to be inclusive of community college districts for particular purposes, such as in the Commission's own statutes.[30] However, rules of statutory construction demand that we first look to the words in context to determine the meaning.[31] "School district" is not defined in Penal Code section 11165.9 or elsewhere in the Child Abuse and Neglect Reporting Act, nor is there a general definition to be used in the Penal Code as a whole.

In *RRLH, Inc. v. Saddleback Valley Unified School Dist.* (1990) 222 Cal.App.3d 1602, 1609, the court engaged in statutory construction to determine whether a particular instance of the term "local agency or district" was inclusive or exclusive of "school districts." While the case does not resolve the question here, it does lay out the rules of statutory construction to be used in reaching a conclusion:

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[29] Penal Code section 11165.9, amended last by Statutes 2006, chapter 701, provides mandated reporters shall make reports of suspected child abuse or neglect "to any police department or sheriff's department, not including a school district police or security department …"

[30] Government Code section 17519 defines "school district" as "any school district, community college district, or county superintendent of schools."

[31] "Statutory language is not considered in isolation. Rather, we 'instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.'" *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1261. (Exhibit N.)

> We acknowledge the Legislature has not always been consistent in its definition of local agency or district, sometimes excluding and sometimes including school districts. (See [Gov. Code,] § 66000.) Accordingly, we must look to the general principles of statutory construction to harmonize the seemingly conflicting provisions of section 53080 and former section 53077.5.
>
> Preeminent among statutory construction principles is the requirement that courts must ascertain the intent of the Legislature. (*California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698, 170 Cal.Rptr. 817, 621 P.2d 856; *DeYoung v. City of San Diego* (1983) 147 Cal.App.3d 11, 17-18, 194 Cal.Rptr. 722.) Further, legislation should be given a reasonable, common sense interpretation consistent with the apparent purpose of the Legislature. In addition, legislation should be interpreted so as to give significance to every word, phrase and sentence of an act. And all parts of the legislation must be harmonized by considering the questioned parts in the context of the statutory framework taken as a whole. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230, 110 Cal.Rptr. 144, 514 P.2d 1224; *McCauley v. City of San Diego* (1987) 190 Cal.App.3d 981, 992, 235 Cal.Rptr. 732.) [32]

Education Code section 38000[33] authorizes the formation of K-12 school district police and security departments. Community college district police departments are authorized under Education Code section 72330, which although it was derived from the same original statute as Education Code section 38000, was renumbered with the reorganization of the Education Code by Statutes 1976, chapter 1010. The reorganization furthered the statutory distinctions between K-12 "school districts" and "community college districts," which have since grown throughout the California codes, including the Penal Code.[34] Education Code section 72330 et seq. never uses the term "school district," but rather consistently refers to a "community college police department."

The Legislature is deemed to be aware of existing laws and could have crafted the exception in Penal Code section 11165.9 for "school district police and security departments" to explicitly include "community college districts" in the definition of school districts for this purpose. "We must assume that the Legislature knew how to create an exception if it wished to do so...." (*City of Ontario v. Superior Court* (1993) 12 Cal.App.4th 894, 902, 16 Cal.Rptr.2d 32.)[35] The fact that it has done so elsewhere in the Penal Code is further evidence of the fact that the Legislature knows how to include community college districts in the definition of school districts for certain purposes, and yet did not do so here.[36]

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[32] Exhibit N.

[33] Formerly numbered Education Code section 39670; derived from 1959 Education Code section 15831.

[34] Penal Code section 291, 291.1 and 291.5 set up separate statutes for law enforcement informing public schools, private schools, and community college districts, respectively when a teacher, instructor or other employees are arrested for sex offenses.

[35] Exhibit N.

[36] Penal Code section 830.32 separately describes "[m]embers of a California Community College police department appointed pursuant to Section 72330 of the Education Code" and

Further, limiting the exclusion of "school district police or security departments" from the entities required to perform the above activities to K-12 school districts is consistent with legislative history. Penal Code section 11165.9, as added by Statutes 1987, chapter 1459, was derived from a definition found in former Penal Code section 11165—that section had been amended earlier in the same session by Statutes 1987, chapter 1444 (Sen. Bill (SB) No. 646) to specify for the first time that police departments do not include school district police and security departments. The Senate Rules Committee, Office of Senate Floor Analyses, 3rd reading analysis of SB 646 (Reg. Sess. 1987-1988), as amended September 1, 1987, states:

> According to Senator Watson's Task Force on Child Abuse and its Impact on Public Schools, there has been a great deal of concern expressed over reports of alleged child abuse being made to a school district police or security department rather than to local law enforcement agencies. Existing law is unclear about whether such reports meet the statutory criteria.
>
> These school related agencies do not always have the full training that other peace officers receive, and often they do not have the personnel necessary to deal with reports of child abuse. Moreover, procedures and recordkeeping vary from school to school; thus, the possibility exists that reports might be lost or rendered unusable in any subsequent criminal action.
>
> According to the Senate Judiciary Committee analysis, this bill has been recommended to clarify that school district police or security departments would not be considered child protective agencies for the purposes of child abuse reporting.

The analysis also states that the other purpose of the bill:

> is to narrow the definition of child abuse for the purposes of reporting to allow school personnel to break up fights on the premises and to defend themselves. ¶…¶ The task force listened to a number of individuals employed by school districts who complained that the reporting requirements under existing law were too vague. As a result, reports of abuse were made against school personnel who engaged in certain conduct which might be considered abusive in certain situations but which was employed in order to stop a fight, used for self-defense, or applied to take possession of weapons or dangerous objects from a pupil. School personnel suggested the vagueness of the existing reporting requirements coupled with the fact that their positions demanded a substantial amount of contact with unruly and disruptive children subjected them to repeated reports of child abuse, each of which needed to be investigated.[37]

In this context, referencing "public schools," "pupils," and "unruly and disruptive children," the Legislature's use of the term "school district" is consistent with a limitation to K-12. In addition, one further distinction exists in the authorizing statutes for K-12 school district police

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"members of a police department of a school district pursuant to Section 38000 of the Education Code." Further, Penal Code section 13710, subdivision (a)(2), relating to restraining orders, states: "The police department of a community college or school district described in subdivision (a) or (b) of Section 830.32 shall … ."

[37] Exhibit N.

departments, and the corresponding community college district statute. Education Code section 38000 includes the following language: "It is the intention of the Legislature in enacting this section that a school district police or security department is supplementary to city and county law enforcement agencies and is not vested with general police powers." This language was not included in Education Code section 72330 when it was derived from the earlier code section, indicating that community college police departments do not have the same fundamental restriction on their purpose and authority. Based upon all of the above, staff finds that the meaning of "school district police or security department" in Penal Code section 11165.9 is the same as that found in Education Code section 38000, which solely authorizes the formation of K-12 school district police and security departments.

Thus, K-12 school districts are not required to receive child abuse and neglect reports pursuant to Penal Code section 11165.9 and engage in follow-up reporting and investigation activities, but community college district police departments are required by the test claim statutes to perform these activities. For the reasons below, however, staff finds that the activities listed above are not mandated by the state for community college district police departments.

In 2003, the California Supreme Court decided the *Kern High School Dist.* case and considered the meaning of the term "state mandate" as it appears in article XIII B, section 6 of the California Constitution. The school district claimants in *Kern* participated in various funded programs each of which required the use of school site councils and other advisory committees. The claimants sought reimbursement for the costs from subsequent statutes which required that such councils and committees provide public notice of meetings, and post agendas for those meetings. [38]

When analyzing the term "state mandate," the court reviewed the ballot materials for article XIII B, which provided that "a state mandate comprises something that a local government entity is required or forced to do."[39] The ballot summary by the Legislative Analyst further defined "state mandates" as "requirements imposed on local governments by legislation or executive orders." [40] The court also reviewed and affirmed the holding of *City of Merced v. State of California* (1984) 153 Cal.App.3d 777, determining that, when analyzing state-mandate claims, the underlying program must be reviewed to determine if the claimant's participation in the underlying program is voluntary or legally compelled.[41] The court stated the following:

> In *City of Merced*, the city was under no legal compulsion to resort to eminent domain-but when it elected to employ that means of acquiring property, its obligation to compensate for lost business goodwill was not a reimbursable state mandate, because the city was not required to employ eminent domain in the first place. Here as well, if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirements related to that program does not constitute a reimbursable state mandate. (Emphasis in original.)[42]

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[38] *Kern High School Dist., supra*, 30 Cal.4th 727.

[39] *Id.* at page 737.

[40] *Ibid*.

[41] *Id.* at page 743.

[42] *Ibid.*

Thus, the Supreme Court held as follows:

> [W]e reject claimants' assertion that they have been legally compelled to incur notice and agenda costs, and hence are entitled to reimbursement from the state, based merely upon the circumstance that notice and agenda provisions are mandatory elements of education-related programs in which claimants have participated, *without regard to whether claimant's participation in the underlying program is voluntary or compelled.* [Emphasis added.][43]

Community college districts are authorized, but not required by the Education Code to employ peace officers.[44] Thus, the underlying decision to employ peace officers is discretionary and not legally compelled by the state. Therefore, the activities required by the test claim statutes of community college district police are, likewise, not legally compelled by the state.

Absent such legal compulsion, the courts have ruled that at times, based on the particular circumstances, "practical" compulsion might be found. The Supreme Court in *Kern High School Dist.* addressed the issue of "practical" compulsion in the context of a school district that had participated in optional funded programs in which new requirements were imposed. In *Kern*, the court determined there was no "practical" compulsion to participate in the underlying programs, since a district that elects to discontinue participation in a program does not face "certain and severe … penalties" such as "double … taxation" or other "draconian" consequences.[45]

In 2009, the Third District Court of Appeal decided *Department of Finance v. Commission on State Mandates*, and applied the *Kern* practical compulsion test to determine whether school district police departments were mandated by the state to comply with requirements imposed by the Peace Officer Procedural Bill of Rights Act.[46] The court recognized that unlike cities and counties, school districts do not have provision of police protection as an essential and basic function. Thus, the court held that providing police protection is not mandated for school districts unless there is a concrete showing that, as a practical matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.

> …the "necessity" that is required is facing " 'certain and severe penalties' such as 'double … taxation' or other 'draconian' consequences." [Citation omitted.] That cannot be established in this case without a concrete showing that reliance upon the general law enforcement resources of cities and counties will result in such severe adverse consequences.
>
> [¶][¶]
>
> …the districts in issue are authorized, but not required, to provide their own peace officers and do not have provision of police protection as an essential and basic function. It is not essential unless there is a showing that, as a practical

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[43] *Id.* at p. 731.

[44] Education Code section 72330.

[45] *Kern High School Dist., supra,* 30 Cal.4th 727, 754.

[46] *Department of Finance v. Commission on State Mandates* (2009) 170 Cal.App.4th 1355.

matter, exercising the authority to hire peace officers is the only reasonable means to carry out their core mandatory functions.[47]

There is no evidence in the record that community college districts are practically compelled to establish their own police or security departments and comply with the downstream requirements imposed by the test claim statutes on "police or security departments."

The claimant filed comments, dated June, 22, 2009, disagreeing with this analysis. The claimant contends that community college districts are entitled to reimbursement for the activities cited above that are performed by their police or security departments. The claimant argues that public school districts are generally not compelled to hire specific types of employees, and the job classification or nature of duties performed have never been a disqualification for reimbursement. The claimant cites the *Pupil Suspensions, Expulsions and Expulsion Appeals* program (CSM 4455, 4456, 4457) and claims that school counselors, employees that are not required by state law to be employed by a district, perform the duties that result in mandate reimbursement for that program. The same result should occur here. The claimant further contends that the *Kern High School Dist*., *City of Merced*, and *Department of Finance* cases are factually distinguishable and should not be applied to this claim.

Staff disagrees with the claimant's allegations. The issue of what constitutes a state-mandated program is a question of law.[48] The *City of Merced*, *Kern High School Dist*., and *Department of Finance* cases are precedential and binding on the Commission in determining when and under what circumstances a statute or executive order constitutes a state-mandated program. These cases are directly on point and apply here. Moreover, unlike the programs referred to by claimant that are reimbursable regardless of the employee that implements the required duties, the statutes here – Penal Code section 11165.9 and following - expressly refer to the "police department" as the unit of local government mandated to perform the activity. By the plain language of Education Code section 72330, community colleges have the discretion to have a police or security department and employ peace officers.

Accordingly, the state has not mandated school district or community college district "police or security departments" to receive child abuse and neglect reports pursuant to Penal Code section 11165.9 and to engage in follow-up reporting and investigation activities required by Penal Code sections 11166.2, 11168, 11169, 11170; Title 11, California Code of Regulations, section 903; and the "Suspected Child Abuse Report" Form SS 8572, and the "Child Abuse Investigation Report" Form SS 8583. Thus, school districts and community college districts are not entitled to reimbursement for the activities required of "police departments."

Activities performed by "a law enforcement agency"

Furthermore, some of the cross-reporting and notification activities required in the test claim statutes are imposed generally on "a law enforcement agency," without excluding "a school district police or security department" from the requirements. The activities required of "law enforcement agencies" are:

- Report by telephone immediately, or as soon as practically possible, to the agency given responsibility for investigation of cases under Welfare and Institutions Code section 300 and to the district attorney's office every known or suspected instance of child abuse

[47] *Id.* at page 1367.

[48] *County of San Diego*, *supra*, 15 Cal.4th at p. 109.

reported to it, except acts or omissions coming within Penal Code section 11165.2, subdivision (b), which shall be reported only to the county welfare department. (Pen. Code, § 11166, subd. (i), now subd. (k).)

- Report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. (Pen. Code, § 11166, subd. (i), now subd. (k).)
- Send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision. (Pen. Code, § 11166, subd. (i), now subd. (k).)
- Cross-report all cases of child death suspected to be related to child abuse or neglect to the county child welfare agency. (Pen. Code, § 11166.9, subd. (k), now § 11174.34, subd. (k).)
- Notify, in writing, the person listed in the Child Abuse Central Index that he or she is in the index, upon receipt of relevant information concerning child abuse or neglect reports contained in the index from the Department of Justice regarding placement with a responsible relative pursuant to Welfare and Institutions Code sections 281.5, 305, and 361.3. The notification shall include the location of the original investigative report and the submitting agency. The notification shall be submitted to the person listed at the same time that all other parties are notified of the information, and no later than the actual judicial proceeding that determines placement. (Pen. Code, § 11170, subd. (c).)

Staff finds that a broader reading of "law enforcement agency" is warranted here, using a basic tenet of statutory construction: "When the Legislature uses materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in meaning."[49] Thus, by using the broader phrase of "law enforcement agency," without excluding school district police or security departments" from the requirements bulleted above, the Legislature intended a different result. While now, pursuant to the definition expressed in section 11165.9, a K-12 school district police or security department has no mandatory duties of child abuse investigation, nor are they the proper recipient of mandated reports, all law enforcement agencies, including those maintained by K-12 school districts and community college districts, may receive reports of "known or suspected instances of child abuse" that require notification and cross-reporting to the appropriate agencies. Applying this rule does not lead to an absurd result because the legislative intent behind the Child Abuse and Neglect Report Act is to protect children from abuse and neglect,[50] a duty that is furthered by the broadest reading of the cross-reporting requirements.

However, staff finds that the notification and cross-reporting activities required by Penal Code sections 11166, 11166.9 (now Pen. Code, § 11174.34), and 11170 are not mandated by the state. School districts and community college districts are authorized, but not required by the

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[49] *People v. Trevino* (2001) 26 Cal.4th 237, 242. (Exhibit N.)

[50] Penal Code section 11164, subdivision (b).

Education Code to employ peace officers.[51] Thus, the underlying decision to employ peace officers is discretionary and not legally compelled by the state. Therefore, the activities required by the test claim statutes of law enforcement agencies are, likewise, not legally compelled by the state when performed by school district and community college district law enforcement agencies. Moreover, there is no concrete evidence in the record that school districts and community college districts are practically compelled to maintain their own law enforcement agencies and not rely on the general law enforcement resources of cities and counties.

Accordingly, staff finds that the state has not mandated school district and community college district law enforcement agencies to engage in the notification and cross-reporting activities required by Penal Code sections 11166, 11166.9 (now Pen. Code, § 11174.34), and 11170. Thus, school districts and community college districts are not entitled to reimbursement for the activities required of "law enforcement agencies."

(B) Mandated Reporting of Child Abuse and Neglect

Penal Code Section 11164:

The test claim pleadings include Penal Code section 11164.[52] Subdivision (a) states that the title of the article is the "Child Abuse and Neglect Reporting Act," and subdivision (b) provides that "[t]he intent and purpose of this article is to protect children from abuse and neglect. In any investigation of suspected child abuse or neglect, all persons participating in the investigation of the case shall consider the needs of the child victim and shall do whatever is necessary to prevent psychological harm to the child victim."

In *Jacqueline T. v. Alameda County Child Protective Services* (2007) 155 Cal.App.4th 456, 470, the court examined Penal Code section 11164 and found "the statute imposed no mandatory duty on County or Employees. Rather, the statute merely stated the Legislature's "intent and purpose" in enacting CANRA, an article composed of over 30 separate statutes." In reaching this conclusion, the court relied on reasoning from *County of Los Angeles v. Superior Court* (2002) 102 Cal.App.4th 627, 639 [*Terrell R.*]:

> An enactment creates a mandatory duty if it requires a public agency to take a particular action. (*Wilson v. County of San Diego, supra*, 91 Cal.App.4th at p. 980.) An enactment does not create a mandatory duty if it merely recites legislative goals and policies that must be implemented through a public agency's exercise of discretion. (*Ibid.*) The use of the word "shall" in an enactment does not necessarily create a mandatory duty. (*Morris v. County of Marin* (1977) 18 Cal.3d 901, 910-911, fn. 6 [136 Cal.Rptr. 251, 559 P.2d 606]; *Wilson v. County of San Diego, supra,* 91 Cal.App.4th at p. 980.)[53]

Staff also finds this statement of law persuasive, and the *Jacqueline T.* court's legal finding on the nature of section 11164 as merely an expression of legislative intent is directly on point with the case at hand. Therefore, staff finds that Penal Code section 11164 does not mandate a new program or higher level of service on school districts.

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[51] Education Code sections 38000 and 72330.

[52] Added by Statutes 1987, chapter 1459; amended by Statutes 2000, chapter 916.

[53] Exhibit N.

Penal Code Sections 11165.9, 11166, and 11168, Including Former Penal Code Section 11161.7:

Penal Code section 11166,[54] subdivision (a), as pled, provides that "a mandated reporter shall make a report to an agency specified in Section 11165.9 whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make a report to the agency immediately or as soon as is practicably possible by telephone and the mandated reporter shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident." Penal Code section 11165.9 requires reports be made "to any police department, sheriff's department, county probation department if designated by the county to receive mandated reports, or the county welfare department. It does not include a school district police or security department." Penal Code section 11168[55] (derived from former Pen. Code, § 11161.7)[56] requires the written reports to be made on forms "adopted by the Department of Justice."

Mandated child abuse reporting has been part of California law since 1963, when Penal Code section 11161.5 was first added. Former Penal Code section 11161.5, as amended by Statutes 1974, chapter 348, required specified medical professionals, public and private school officials and teachers, daycare workers, summer camp administrators, and social workers to report on observed non-accidental injuries or apparent sexual molest, by making a report by telephone and in writing to local law enforcement and juvenile probation departments, or county welfare or health departments. The code section began:

> (a) In any case in which a minor is brought to a physician and surgeon, dentist, resident, intern, podiatrist, chiropractor, or religious practitioner for diagnosis, examination or treatment, or is under his charge or care, or in any case in which a minor is observed by any registered nurse when in the employ of a public health agency, school, or school district and when no physician and surgeon, resident, or intern is present, by any superintendent, any supervisor of child welfare and attendance, or any certificated pupil personnel employee of any public or private school system or any principal of any public or private school, by any teacher of any public or private school, by any licensed day care worker, by an administrator of a public or private summer day camp or child care center, or by any social

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[54] As added by Statutes 1980, chapter 1071; amended by Statutes 1981, chapter 435, Statutes 1982, chapter 905, Statutes 1984, chapter 1423, Statutes 1986, chapter 1289, Statutes 1987, chapter 1459, Statutes 1988, chapters 269 and 1580, Statutes 1990, chapter 1603, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapters 1080 and 1081, and Statutes 2000, chapter 916.

[55] As added by Statutes 1980, chapter 1071 and amended by Statutes 2000, chapter 916. Derived from former Penal Code section 11161.7, added by Statutes 1974, chapter 836, and amended by Statutes 1977, chapter 958.

[56] Penal Code section 11161.7 was added by Statutes 1974, chapter 836, and required DOJ to issue an optional form, for use by medical professionals to report suspected child abuse. Then, Statutes 1977, chapter 958, one of the test claim statutes, amended section 11161.7 and for the first time required a mandatory reporting form to be adopted by DOJ, to be distributed by county welfare departments.

> worker, and it appears to the [reporting party] from observation of the minor that the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor, he shall report such fact by telephone and in writing, within 36 hours, to both the local police authority having jurisdiction and to the juvenile probation department;[57] or in the alternative, either to the county welfare department, or to the county health department. The report shall state, if known, the name of the minor, his whereabouts and the character and extent of the injuries or molestation.

The list of "mandated reporters," as they are now called, has grown since 1975. The detailed list, now found at Penal Code section 11165.7,[58] includes all of the original reporters and now also includes teacher's aides, other classified school employees, as well as numerous other public and private employees and professionals.

The claimant contends that the duties of the mandated reporters are reimbursable as follows:

> … the public school mandated reporters are mandated reporters by virtue of their employment, that is, public school nurses and public school teachers are school nurses and school teachers because they are employed by school districts. The services provided by public school employees are not performed for their individual or personal benefit, but to provide service to students, which is the statutory duty of the school district employer. The employer resource being consumed is the employee time, compensated by the employer, and such costs have always been reimbursable when staff time implements a reimbursable mandate.[59]

Staff finds that the statutory scheme requires duties of individuals, identified by either their profession or their employer, but the duties are not being performed on behalf of the employer or for the benefit of the employer, nor are they required by law to be performed using the employer's resources. Penal Code section 11166 also includes the following provision, criminalizing the failure of mandated reporters to report child abuse or neglect:[60]

> Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars ($1,000) or by both that fine and punishment.

Failure to make an initial telephone report, followed by preparation and submission of a written report within 36 hours, on a form designated by the Department of Justice, subjects the mandated

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[57] Subdivision (b) provided that reports that would otherwise be made to a county probation department are instead made to the county welfare department under specific circumstances.

[58] Added by Statutes 2000, chapter 916.

[59] Claimant comments dated June 22, 2009, page 3.

[60] This provision was moved to Penal Code section 11166 by Statutes 2000, chapter 916. Prior to that, the misdemeanor provision was found at section 11172, as added by Statutes 1980, chapter 1071.

reporter to criminal liability. This criminal penalty applies to mandated reporters as individuals and does not extend to their employers. In addition, under Penal Code section 11172, mandated reporters are granted immunity as individuals for any reports they make: "No mandated reporter shall be civilly or criminally liable for any report required or authorized by this article, and *this immunity shall apply even if* the mandated reporter acquired the knowledge or reasonable suspicion of child abuse or neglect *outside of his or her professional capacity or outside the scope of his or her employment*." [Emphasis added.] Therefore, staff finds that the duties are required of mandated reporters as individuals, and there is no new program or higher level of service imposed on school districts for the activities required of mandated reporters.

The draft staff analysis issued in October 2007 discussed the fact that article XIII B, section 6 does not require reimbursement for "[l]egislation defining a new crime or changing an existing definition of a crime."[61] In comments dated November 7, 2007, the claimant states that the analysis:

> has misconstrued the constitutional exception and has also ignored Government Code Section 17556, subdivision (g), which excludes reimbursement "only for that portion of the statute relating directly to the enforcement of the crime or infraction." The test claim alleges reimbursable activities for the mandated reporters to report observed child abuse and neglect. The reporting is compelled both by affirmative law (Section 11165.1) and by penal coercion (Section 11166). The test claim does not allege mandated costs to enforce the crime of failure to report which would be excluded by subdivision (g).[62]

The pertinent portion of Government Code section 17556 follows:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds any one of the following: ¶...¶
>
> (g) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

The Government Code section 17556, subdivision (g) "crimes exception" to finding costs mandated by the state only applies after finding that a new program or higher level of service has been imposed. Here, staff finds that the duties alleged are required of mandated reporters as individual citizens, and no new program or higher level of service has been imposed directly on school districts. Therefore, staff finds that Penal Code sections 11165.9, 11166, and 11168, (including former Penal Code section 11161.7), do not mandate a new program or higher level of service on school districts for activities required of mandated reporters.

Definitions: Penal Code Sections 273a, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6:

The test claim alleges that all of the statutory definitions of abuse and neglect in the Child Abuse and Neglect Reporting Act result in a reimbursable state-mandated program. The claimant alleges that:

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[61] California Constitution, article XIII B, section 6, subdivision (a)(2).

[62] Exhibit G.

> [T]he enumeration of additional incidents of child abuse and neglect in the statutes after 1974 results in a higher level of service since each new definition results in a need to report. …Each new reportable incident is an additional administrative task for public school employees and thus a higher level of service.[63]

Staff disagrees with the claimant and finds that the definitions in Penal Code sections 273a, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6 do not mandate a new program or higher level of service. The descriptions of reportable child abuse and neglect under prior law includes the statutory definitions of child abuse and neglect pled by the claimant here and, thus, do not create a higher level of service.

Penal Code section 11165.6, [64] as pled, defines child abuse as "a physical injury that is inflicted by other than accidental means on a child by another person." The code section also defines the term "child abuse or neglect" as including the statutory definitions of sexual abuse (§ 11165.1[65]), neglect (§ 11165.2[66]), willful cruelty or unjustifiable punishment (§ 11165.3[67]), unlawful corporal punishment or injury (§ 11165.4[68]), and abuse or neglect in out-of-home care (§ 11165.5[69]). The test claim also alleges the statute defining the term child (§ 11165[70]).

While the definitional code sections alone do not require any activities, they do require analysis to determine if, in conjunction with any of the other test claim statutes, they mandate a new program or higher level of service by increasing the scope of required activities within the child abuse and neglect reporting program.

Penal Code section 11165 defines the word child as "a person under the age of 18 years." This is consistent with prior law, which has defined child as "a person under the age of 18 years" since the child abuse reporting law was reenacted by Statutes 1980, chapter 1071. Prior to that time, mandated reporting laws used the term minor rather than child. Minor was not defined in the Penal Code, but rather during the applicable time the definition was found in the Civil Code, as "an individual who is under 18 years of age."[71] Thus no substantive changes have occurred whenever the word child has been substituted for the word minor.

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[63] Claimant comments dated June 22, 2009, page 4. (Exhibit M.)

[64] As repealed and reenacted by Statutes 2000, chapter 916.

[65] Added by Statutes 1987, chapter 1459; amended by Statutes 1997, chapter 83 and Statutes 2000, chapter 287; derived from former Penal Code section 11165 and 11165.3.

[66] Added by Statutes 1987, chapter 1459; derived from former Penal Code section 11165.

[67] Added by Statutes 1987, chapter 1459.

[68] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, and Statutes 1993, chapter 346.

[69] Added by Statutes 1987, chapter 1459; amended by Statutes 1988, chapter 39, Statutes 1993, chapter 346, and Statutes 2000, chapter 916. The cross-reference to section 11165.5 was removed from section 11165.6 by Statutes 2001, chapter 133.

[70] Added by Statutes 1987, chapter 1459; derived from former Penal Code section 11165.

[71] Former Civil Code section 25; reenacted as Family Code section 6500 (Stats. 199, ch. 162, operative Jan. 1, 1994.)

Former Penal Code section 11161.5 mandated child abuse reporting when "the minor has physical injury or injuries which appear to have been inflicted upon him by other than accidental means by any person, that the minor has been sexually molested, or that any injury prohibited by the terms of Section 273a has been inflicted upon the minor." The prior law of Penal Code section 273a[72] follows:

> (1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding 1 year, or in the state prison for not less than 1 year nor more than 10 years.
>
> (2) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

The definition of child abuse and neglect found in prior law was very broad, and required mandated child abuse reporting of physical and sexual abuse, as well as non-accidental acts by any person which could cause mental suffering or physical injury. Prior law also required mandated reporting of situations that injured the health or may endanger the health of the child, caused or permitted by any person.

Staff finds these sweeping descriptions of reportable child abuse and neglect under prior law encompass every part of the statutory definitions of child abuse and neglect, as pled. Claimant's November 7, 2007 comments dispute this and state: "To the contrary, the new CANRA definitions are each precise, specifically enumerated, and evolved over time by numerous amendments to the code." Staff agrees, but this does not mean that the amended definitions have created a higher level of service over the previous definitions of reportable child abuse and neglect. In *Williams v. Garcetti* (1993) 5 Cal.4th 561, 568, the court stated a fundamental rule of statutory construction: "'Where changes have been introduced to a statute by amendment it must be assumed the changes have a purpose ....' " [Citation omitted.] That purpose is not necessarily to change the law. 'While an intention to change the law is usually inferred from a material change in the language of the statute [citations], a consideration of the surrounding circumstances may indicate, on the other hand, that the amendment was merely the result of a legislative attempt to clarify the true meaning of the statute.'" Staff finds that the same acts of

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[72] Added by Statutes 1905, chapter 568; amended by Statutes 1963, chapter 783, and Statutes 1965, chapter 697. The section has since had the criminal penalties amended by Statutes 1976, chapter 1139, Statutes 1980, chapter 1117, Statutes 1984, chapter 1423, Statutes 1993, chapter 1253, Statutes 1994, chapter 1263, Statutes 1996, chapter 1090, and Statutes 1997, chapter 134, as pled, but the description of the basic crime of child abuse and neglect remains good law.

abuse or neglect that are reportable under the test claim statutes were reportable offenses under pre-1975 law.

Penal Code section 11165.1 provides that sexual abuse, for purposes of child abuse reporting, includes sexual assault or sexual exploitation, which are further defined. Sexual assault includes all criminal acts of sexual contact involving a minor, and sexual exploitation refers to matters depicting, or acts involving, a minor and "obscene sexual conduct." Prior law required reporting of sexual molestation, as well as "unjustifiable physical pain or mental suffering."

Sexual molestation is not a defined term in the Penal Code. However, former Penal Code section 647a, now section 647.6, criminalizes actions of anyone "who annoys or *molests* any child under the age of 18." In a case regularly cited to define "annoy or molest," *People v. Carskaddon* (1957) 49 Cal.2d 423, 425-426, the California Supreme Court found that:

> The primary purpose of the above statute is the 'protection of children from interference by sexual offenders, and the apprehension, segregation and punishment of the latter.' (*People v. Moore*, *supra*, 137 Cal.App.2d 197, 199; *People v. Pallares*, 112 Cal.App.2d Supp. 895, 900 [246 P.2d 173].) The words 'annoy' and 'molest' are synonymously used (Words and Phrases, perm. ed., vol. 27, 'molest'); they generally refer to conduct designed 'to disturb or irritate, esp. by continued or repeated acts' or 'to offend' (Webster's New Inter. Dict., 2d ed.); and as used in this statute, they ordinarily relate to 'offenses against children, [with] a connotation of abnormal sexual motivation on the part of the offender.' (*People v. Pallares, supra*, p. 901.) Ordinarily, the annoyance or molestation which is forbidden is 'not concerned with the state of mind of the child' but it is 'the objectionable acts of defendant which constitute the offense,' and if his conduct is 'so lewd or obscene that the normal person would unhesitatingly be irritated by it, such conduct would 'annoy or molest' within the purview of' the statute. (*People v. McNair*, 130 Cal.App.2d 696, 697-698 [279 P.2d 800].)[73]

By use of the general term sexual molestation in prior law, rather than specifying sexual assault, incest, prostitution, or any of the numerous Penal Code provisions involving sexual crimes, the statute required mandated child abuse reporting whenever there was evidence of "offenses against children, [with] a connotation of abnormal sexual motivation." Thus, sexual abuse was a reportable offense under prior law, as under the definition at Penal Code section 11165.1.

Penal Code section 11165.2 specifies that neglect, as used in the Child Abuse and Neglect Reporting Act, includes situations "where any person having care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered," "*including* the intentional failure of the person having care or custody of a child to provide adequate food, clothing, shelter, or medical care." Not providing adequate food, clothing, shelter, or medical care is tantamount to placing a child "in such situation that its person or health may be endangered," as described in prior law, above. Thus, the same circumstances of neglect were reportable under prior law, as under the definition pled.

The prior definition of child abuse included situations where "[a]ny person … willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering." The current definition of willful cruelty or unjustifiable punishment of a child, found at Penal

[73] Exhibit N.

Code section 11165.3 carries over the language of Penal Code section 273a, without distinguishing between the misdemeanor and felony standards.[74]

The definition of unlawful corporal punishment or injury, found at Penal Code section 11165.4, as pled, prohibits "any cruel or inhuman corporal punishment or injury resulting in a traumatic condition." Again, prior law required reporting of any non-accidental injuries, willful cruelty, and "unjustifiable physical pain or mental suffering," which encompasses all of the factors described in the definition for reportable unlawful corporal punishment or injury. The current law also excludes reporting of self-defense and reasonable force when used by a peace officer or school official against a child, within the scope of employment. This exception actually narrows the scope of child abuse reporting when compared to prior law.

Penal Code section 11165.5 defines abuse or neglect in out-of-home care as all of the previously described definitions of abuse and neglect, "where the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency." Prior law required reporting of abuse by "any person," and neglect by anyone who had a role in the care of the child.[75] Thus any abuse reportable under section 11165.5 would have been reportable under prior law, as detailed above. As further evidence of this redundancy, Statutes 2001, chapter 133, effective July 31, 2001, removed the reference to abuse or neglect in out-of-home care from the general definition of child abuse and neglect at Penal Code section 11165.6.

Therefore, staff finds that Penal Code sections 273a, 11165, 11165.1, 11165.2, 11165.3, 11165.4, 11165.5, and 11165.6, do not mandate a new program or higher level of service on school districts by increasing the scope of child abuse and neglect reporting.

(C) Training Mandated Reporters

Penal Code Section 11165.7:

The claimant is also requesting reimbursement for training mandated reporters based on Penal Code section 11165.7.[76] Penal Code section 11165.7, subdivision (a), now includes the complete list of professions that are considered mandated reporters of child abuse and neglect. The code section continues, as amended by Statutes 2001, chapter 754:

> (b) Volunteers as public or private organizations whose duties require direct contact and supervision of children are encouraged to obtain training in the identification and reporting of child abuse.

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[74] Penal Code section 273a distinguishes between those "circumstances or conditions likely to produce great bodily harm or death" (felony), and those that are not (misdemeanor).

[75] *People v. Toney* (1999) 76 Cal.App.4th 618, 621-622: "No special meaning attaches to this language [care or custody] "beyond the plain meaning of the terms themselves. The terms 'care or custody' do not imply a familial relationship but only a willingness to assume duties correspondent to the role of a caregiver." (*People v. Cochran* (1998) 62 Cal.App.4th 826, 832, 73 Cal.Rptr.2d 257.)" (Exhibit N.)

[76] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 2000, chapter 916, Statutes 2001, chapter 133 (urgency), and Statutes 2001, chapter 754.

> (c) Training in the duties imposed by this article shall include training in child abuse identification and training in child abuse reporting. As part of that training, school districts shall provide to all employees being trained a written copy of the reporting requirements and a written disclosure of the employees' confidentiality rights.
>
> (d) School districts that do not train their employees specified in subdivision (a) in the duties of mandated reporters under the child abuse reporting laws shall report to the State Department of Education the reasons why this training is not provided.
>
> (e) The absence of training shall not excuse a mandated reporter from the duties imposed by this article.

In 2004, Penal Code section 11165.7, subdivision (c), was amended to provide that all employers of mandated reporters are "strongly encouraged" to provide training:

> (c) Employers are *strongly encouraged* to provide their employees who are mandated reporters with training in the duties imposed by this article. This training shall include training in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters with the statement required pursuant to subdivision (a) of Section 11166.5 [each mandated employee shall sign a statement that have knowledge and will comply with the provision of the Act]. (Emphasis added.)

The 2004 amendment to section 11165.7 left subdivision (d) unchanged.[77]

Claimant alleges a reimbursable state mandate for school districts: "To either train its mandated reporters in child abuse or neglect detection and their reporting requirements; or, to file a report with the State Board of Education stating the reasons why this training is not provided."[78] In comments on the draft staff analysis, dated November 7, 2007, the claimant states: "The requirement to train staff derives from the same form of legislative imperative ("shall") as subdivision (c), which states that "districts which do not train the employees … shall report … the reasons training is not provided." … Both training and reporting are required as mutually exclusive parts of Section 11165.7." Similar comments were filed on June 22, 2009.

DSS argues there is no express duty in the test claim statute for school districts, as employers or otherwise, to provide training to mandated reporters. On page 3 of the November 25, 2002 comments, DSS states:

> Claimant also asserts that Penal Code Section 11165.7 imposes mandated reporter training. (See Test Claim, page 123 lines 16-23) However, Claimant conceded that the training is optional, and can be avoided if it reports to the State Department of Education why such training was not provided. The form of the report is not specified in law. Therefore, the report can be transmitted orally or electronically, at no or de minimis cost to Claimant. Moreover, Claimant has not

[77] Statutes 2004, ch. 842 (Sen. Bill. No. 1313).

[78] Test claim filing, page 123. (Exhibit A.)

provided any facts to support its view that activities associated with such a report are in excess of that which was required under law in 1975.

Staff finds that Penal Code section 11165.7 does not impose a mandate on school districts to provide child abuse training. No mandatory language in Penal Code section 11165.7, as it existed in 2001, is used to require school districts to provide mandated reporter training. In *City of San Jose v. State of California*, the court found that "[w]e cannot, however, read a mandate into language which is plainly discretionary."[79] The court concluded "there is no basis for applying section 6 as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[80]

In 2004, the statute was amended to state that employers are "*strongly encouraged*" to provide training. The phrase "strongly encouraged" is not mandatory language, but an expression of legislative intent.[81] Legislative history for the 2004 amendment reveals that the intent of the amendment was to clarify the law, rather than change existing law. The analysis of Senate Rules Committee states that the amendment to section 11165.7 "*clarifies that irrespective of whether an employer provides training*, the employer shall be required to provide mandated reporter employees with the statement that the employee must sign acknowledging that he or she is a mandated reporter." (Emphasis added.)[82]

Therefore, based on the plain language of the statute,[83] staff finds that Penal Code section 11165.7 does not mandate a new program or higher level of service upon school districts for providing training to mandated reporter employees.

However, if mandated reporter training is not provided, the code section requires that school districts "shall report to the State Department of Education the reasons why." DSS argues that the reporting should be de minimis, and therefore not reimbursable. Mandates law does not support this conclusion, however. The concept of a de minimis activity does appear in mandates case law – most recently in *San Diego Unified School Dist. v. Commission on State Mandates* and *California School Boards Association v. State of California (CSBA)*, which describe a de minimis standard as it applies in a situation where there was an existing non-reimbursable program created by an initiative or federal law, but the state then adds more, by articulating specific procedures that are not expressly set forth in the existing law.[84] Challenged state rules or procedures that are intended to implement an existing law—and whose costs are, in context,

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[79] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

[80] *Id*. at page 1817.

[81] *Terrel R., supra,* 102 Cal.App.4th 627, 639. (Exhibit N.)

[82] Senate Rules Committee, Office of Senate Floor Analysis, August 31, 2004 analysis of Senate Bill No. 1313 (2003-2004 Reg. Sess.) as amended on August 25, 2004. (Exhibit N.)

[83] "'[W]hen interpreting a statute we must discover the intent of the Legislature to give effect to its purpose, being careful to give the statute's words their plain, commonsense meaning.'" [Citation omitted.] *Bonnell v. Medical Bd. of California* (2003) 31 Cal.4th 1255, 1261. (Exhibit N.)

[84] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 888; *CSBA v. State of California* (2009) 171 Cal.App.4th 1183, 1216-1217.

de minimis—should be treated as part and parcel of the mandate imposed by federal law or an initiative adopted by the voters.

The context described by the courts in *San Diego* and *CSBA*, however, does not have a parallel here. The activity of reporting to the State Department of Education on the lack of training is a new activity, severable and distinct from any other part of the Child Abuse and Neglect Reporting Act, and is not implementing a larger, non-reimbursable program.

In addition, Government Code section 17564 provides the minimum amount that must be claimed in either a test claim or claim for reimbursement. The claimant alleges costs in excess of $200, the minimum standard at the time of filing the test claim. A declaration of costs incurred was also submitted by the San Jose Unified School District.[85] Therefore, the test claim satisfies the initial burden of demonstrating that school districts have incurred the minimum increased costs for the test claim statute. Staff notes that Government Code section 17564 now requires that any reimbursement claims submitted must exceed $1000, and this will apply for any future reimbursement claims filed pursuant to this test claim.

Finally, there must be a determination of what is meant by "school districts" in the context of Penal Code section 11165.7 – did the Legislature intend that community college districts be included in this requirement? "School district" is not defined in this code section or elsewhere in CANRA, nor is there a general definition to be used in the Penal Code as a whole. Rules of statutory construction demand that we first look to the words in context to determine the meaning.[86]

The report is required to be made to the State Department of Education, which generally controls elementary and secondary education. The State Department of Education is governed by the Board of Education. Education Code section 33031 provides: "The board shall adopt rules and regulations not inconsistent with the laws of this state (a) for its own government, (b) for the government of its appointees and employees, (c) for the government of the day and evening elementary schools, the day and evening secondary schools, and the technical and vocational schools of the state, and (d) for the government of other schools, *excepting* the University of California, the California State University, and *the California Community Colleges*, as may receive in whole or in part financial support from the state."

A community college district generally provides post-secondary education, and the controlling state organization is the California Community Colleges Board of Governors.[87] Particularly since the reorganization of the Education Code by Statutes 1976, chapter 1010, there are growing statutory distinctions between K-12 "school districts" and "community college districts" throughout the code, including the Penal Code.[88] While these factors alone are not controlling, the fact that the training reporting requirement is limited to "school districts" and not all public

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[85] Test claim filing, Exhibit 1. (Exhibit A.)

[86] "Statutory language is not considered in isolation. Rather, we 'instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.'" *Bonnell v. Medical Bd. of California, supra,* 31 Cal.4th 1255, 1261. (Exhibit N.)

[87] Education Code section 70900 et seq.

[88] Penal Code section 291, 291.1 and 291.5 set up separate statutes for law enforcement informing public schools, private schools, and community college districts, respectively when a teacher, instructor or other employees are arrested for sex offenses.

and private schools, or even all employers of mandated reporters, is indication that the legislative intent was limited, and that school districts should be interpreted narrowly. Therefore, staff finds that the term "school districts" refers to K-12 school districts and is exclusive of community college districts in this case.

Thus, staff finds that Penal Code section 11165.7, subdivision (d), mandates a new program or higher level of service on K-12 school districts, as follows:

- Report to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws.

(D) Investigation of Suspected Child Abuse Involving a School Site or a School Employee

Penal Code Sections 11165.14 and 11174.3:

Penal Code section 11165.14,[89] addresses the duty of law enforcement to investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse against a pupil at a schoolsite. The statute, as last amended in 2000, states the following:

> The appropriate law enforcement agency shall investigate a child abuse complaint filed by a parent or guardian of a pupil with a school or an agency specified in Section 11165.9 against a school employee or other person that commits an act of child abuse, as defined in this article, against a pupil at a schoolsite and shall transmit a substantiated report, as defined in Section 11165.12, of that investigation to the governing body of the appropriate school district or county office of education. A substantiated report received by a governing board of a school district or county office of education shall be subject to the provisions of Section 44031 of the Education Code.

Pursuant to Penal Code section 11165.14, if the governing board of a school district or county office of education receives a substantiated report of child abuse, the district is required to comply with the provisions of Education Code section 44031. Education Code section 44031 establishes the right of K-12 school district employees to inspect their personnel records and requires the school district not to enter information of a derogatory nature into the employee's personnel record until the employee has been given notice, and an opportunity to review and respond to the derogatory comment. These employee rights and duties of a school district have existed in statute since 1968 and, thus, are not eligible for mandate reimbursement pursuant to article XIII B, section 6, subdivision (a)(3).[90]

The test claim does not request reimbursement for complying with the personnel record activities, but alleges that Penal Code section 11165.14 mandates school districts "[t]o assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or

[89] Added by Statutes 1991, chapter 1102, and amended by Statutes 2000, chapter 916.

[90] Education Code section 44031 derives from Education Code section 13001.5 (added by Stats. 1968, ch. 433.)

neglect committed at a school site."[91] In comments dated November 7, 2007, the claimant further argues:

> Nearly every school district employee is a mandated reporter of child abuse and subject to criminal punishment for failure to comply in this duty. Therefore, the district and its employees are practically compelled to participate in the investigation.

In comments dated June 22, 2009, the claimant states the following:

> The duty of local law enforcement to investigate the complaint arises from the parent complaint, not from a mandated reporter. For that reason, the school employee status as a mandated reporter is not relevant. School district employees need not be legally compelled to respond to a law investigation, or coerced, or subject to a penalty. The school district employees would seem to be an essential source of information for incidents that occur on school premises and their cooperation would be the most reasonable method of advancing the investigation. To the extent school district staff time is involved, it is appropriately reimbursable to the school district as a new program or higher level of service that implements a state policy regarding the investigation of child abuse.[92]

DSS argues Penal Code section 11165.14 does not impose a duty on its face for school districts to cooperate with and assist law enforcement agencies.

Staff finds that the plain language of Penal Code section 11165.14 does not require school district personnel to engage in the activities of assisting and cooperating with investigation of complaints as alleged by the claimant. Further, there is no evidence in the record that section 11165.14 "practically compels" the participation of a school district or its employees in a child abuse investigation, in a manner that results in a reimbursable state mandated program.

While a school district's cooperation and assistance in an investigation may be augmented by an underlying civic duty to cooperate with a law enforcement investigation,[93] there is no investigatory duty imposed by statute on the school district or its employees. The Crime and Violence Prevention Center of the California Attorney General's Office issues a publication called "Child Abuse: Educator's Responsibilities," which is designed to "assist educators in determining their reporting responsibilities." In the 6th edition, revised January 2007, at page 13, the document states:

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[91] Test claim filing, page 123.

[92] Exhibit M.

[93] *People v. McKinnon* (1972) 7 Cal.3d 899, 915, at footnote 6, the Court noted: "As concluded by the President's Commission on Law Enforcement and Administration of Justice: "That every American should cooperate fully with officers of justice is obvious ... [T]he complexity and anonymity of modern urban life, the existence of professional police forces and other institutions whose official duty it is to deal with crime, must not disguise the need - far greater today than in the village societies of the past - for citizens to report all crimes or suspicious incidents immediately; to cooperate with police investigations of crime; in short, to 'get involved.'" (The Challenge of Crime in a Free Society, Report by the President's Commission on Law Enforcement and Administration of Justice (1967) p. 288.)" (Exhibit N.)

> [S]chool personnel who are mandated to report known or reasonably suspected instances of child abuse play a critical role in the early detection of child abuse. Symptoms or signs of abuse are often first seen by school personnel. Because immediate investigation by a law enforcement agency, or welfare department may save a child from repeated abuse, school personnel should not hesitate to report suspicious injuries or behavior. **Your duty is to report, not investigate.** [Emphasis in original.][94]

Based upon all of the above, staff finds neither legal nor practical compulsion has been imposed by Penal Code section 11165.14 for school districts "[t]o assist and cooperate with law enforcement agencies investigating alleged complaints of child abuse or neglect committed at a school site." Therefore, staff finds that Penal Code section 11165.14 does not mandate a new program or higher level of service on school districts.

Claimant further alleges a reimbursable state mandate is imposed by Penal Code section 11174.3;[95] the code section, as pled, follows:

> (a) Whenever a representative of a government agency investigating suspected child abuse or neglect or the State Department of Social Services deems it necessary, a suspected victim of child abuse or neglect may be interviewed during school hours, on school premises, concerning a report of suspected child abuse or neglect that occurred within the child's home or out-of-home care facility. The child shall be afforded the option of being interviewed in private or selecting any adult who is a member of the staff of the school, including any certificated or classified employee or volunteer aide, to be present at the interview. A representative of the agency investigating suspected child abuse or neglect or the State Department of Social Services shall inform the child of that right prior to the interview.
>
> The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Section 11167.5. A representative of the school shall inform a member of the staff so selected by a child of the requirements of this section prior to the interview. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. Failure to comply with the requirements of this section does not affect the admissibility of evidence in a criminal or civil proceeding.
>
> (b) The Superintendent of Public Instruction shall notify each school district and each agency specified in Section 11165.9 to receive mandated reports, and the

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[94] Exhibit N.

[95] Added by Statutes 1987, chapter 640, and amended by Statutes 1998, chapter 311, Statutes 2000, chapter 916.

> State Department of Social Services shall notify each of its employees who participate in the investigation of reports of child abuse or neglect, of the requirements of this section.

Claimant alleges that the mandated activities include notifying "the staff member selected, and for that selected staff member to be present at an interview of a suspected victim when the child so requests." DSS argues that the duty of a staff member to be present at the interview of a suspected victim, upon request, pursuant to Penal Code section 11174.3, is voluntary which "negates the mandate claim."

As discussed above, the court in *City of San Jose, supra*, found that "[w]e cannot, however, read a mandate into language which is plainly discretionary."[96] Penal Code section 11174.3 states: "A staff member selected by a child may decline the request to be present at the interview." Thus, staff finds that the optional nature of a school staff member's attendance at the investigative interview does not impose a reimbursable state-mandated program on school districts. The claimant's November 7, 2007 comments argue:

> The DSA ignores that the district incurs costs for this new activity as a result of two independent choices which are not controlled by the school employer, but by the persons making the choice. Thus, if a student requests (first independent choice) a district employee to participate and the district employee consents (second independent choice), costs are incurred by the district (and not the persons who made the choices).

Accepting this as true, there is still no evidence of either a higher level of service or actual increased costs mandated by the state in order for a school staff member to attend the child abuse investigation interview. Penal Code section 11174.3 states if the district employee opts "to be present at the interview," the interview "*shall be held at a time during school hours when it does not involve an expense to the school.*" Thus, the only requirement on the school district regarding the staff member's presence at an investigative interview is to *not* incur costs. In *County of Sonoma, supra,* 84 Cal.App.4th 1264, 1285, the court found: "The presence of these references to reimbursement for lost revenue in article XIII supports a conclusion that by using the word "cost" in section 6 the voters meant the common meaning of cost as *an expenditure or expense actually incurred.*"

However, there is a new activity plainly required by the test claim statute for a school representative to inform the selected member of the staff of the requirements of Penal Code section 11174.3 prior to the interview. In order to identify the eligible claimants for this activity, there must be a determination of whether there was legislative intent that the terms "school" or "school districts," as used in this code section includes community colleges. In *Delaney v. Baker* (1999) 20 Cal.4th 23, 41-42, the Court found:

> It is, of course, "generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute." (*People v. Dillon* (1983) 34 Cal.3d 441, 468 [194 Cal.Rptr. 390, 668 P.2d 697].) But that presumption is rebuttable if there are contrary indications of legislative intent.[97]

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[96] *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1816.

[97] Exhibit N.

There are no indications of legislative intent to suggest that community college districts were intended to be included in the use of the terms "school" or "school district" within Penal Code section 11174.3; therefore the terms are given the same meaning as determined for Penal Code section 11165.7, above, as excluding community college districts.

Therefore, based on the plain language of the statute, staff finds that Penal Code section 11174.3 mandates a new program or higher level of service on K-12 school districts for the following activity:

- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

> The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school.

(E) Employee Records

Penal Code Section 11166.5:

Penal Code section 11166.5, [98] subdivision (a), as pled, follows, in pertinent part:

> (a) On and after January 1, 1985, any mandated reporter as specified in Section 11165.7, with the exception of child visitation monitors, prior to commencing his or her employment, and as a prerequisite to that employment, shall sign a statement on a form provided to him or her by his or her employer to the effect that he or she has knowledge of the provisions of Section 11166 and will comply with those provisions. The statement shall inform the employee that he or she is a mandated reporter and inform the employee of his or her reporting obligations under Section 11166. The employer shall provide a copy of Sections 11165.7 and 11166 to the employee.[99]

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[98] Added by Statutes 1984, chapter 1718, and amended by Statutes 1985, chapters 464 and 1598, Statutes 1986, chapter 248, Statutes 1987, chapter 1459, Statutes 1990, chapter 931, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1993, chapter 510, Statutes 1996, chapter 1081, Statutes 2000, chapter 916, and Statutes 2001, chapter 133 (oper. Jul. 31, 2001.)

[99] The amendment by Statutes 2000, chapter 916 removed a detailed statement of the content Penal Code section 11166 that was to be included in the form provided by the employer – and instead provides more generically that "The statement shall inform the employee that he or she is

¶…¶

> The signed statements shall be retained by the employer or the court [regarding child visitation monitors], as the case may be. The cost of printing, distribution, and filing of these statements shall be borne by the employer or the court.
>
> This subdivision is not applicable to persons employed by public or private youth centers, youth recreation programs, and youth organizations as members of the support staff or maintenance staff and who do not work with, observe, or have knowledge of children as part of their official duties.

Subdivisions (b) through (d) are specific to the state, or concern court-appointed child visitation monitors, and are not applicable to the test claim allegations.

The claimant alleges that the code section requires school districts "[t]o obtain signed statements from its mandated reporters, on district forms, prior to commencing employment with the district, and as a prerequisite to that employment, to the effect that he or she has knowledge of his or her child abuse and neglect reporting requirements and their agreement to perform those duties."

DSS argues that the claimant has not offered "any evidence that it was necessary to modify employment forms or that employment forms were so modified."

Staff finds that the basic requirements of section 11166.5, subdivision (a) were first added to law by Statutes 1984, chapter 1718. The law affects all employers—both public and private—of what are now termed "mandated reporters." Currently, the list of mandated reporters includes a wide variety of professions, designed to encompass nearly anyone who may come into contact with children, or otherwise may have knowledge of suspected child abuse and neglect, through the course of their work. Just a few examples from this list: essentially all medical and counseling professionals, including interns; all clergy and those that keep their records; any licensee, administrator, or employee of a licensed community care or child day care facility; and commercial film and photographic print processors and their employees. Such individuals may be employed by diverse private non-profit or for-profit employers including medical groups, hospitals, churches, synagogues and other places of worship, small in-home daycares as well as large childcare centers, and any retail store with a photo lab.

The California Supreme Court in *County of Los Angeles v. State of California*, *supra*, found that "new program or higher level of service" addressed "programs that carry out the governmental function of providing services to the public, or laws which, to implement a state policy impose unique requirements on local governments and do not apply generally to all residents and entities in the state."[100] In *County of Los Angeles v. Department of Industrial Relations* (1989) 214 Cal.App.3d 1538, 1545-1546, the court applied the reasoning to a claim for mandate reimbursement for elevator safety regulations that applied to all public and private entities.

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a mandated reporter and inform the employee of his or her reporting obligations under Section 11166." Staff finds that the essential content requirements for the form remain the same.

In addition, Statutes 2000, chapter 916 first added the requirement that "The employer shall provide a copy of Sections 11165.7 and 11166 to the employee."

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

> County acknowledges the elevator safety regulations apply to all elevators, not just those which are publicly owned. FN4 As these regulations do not impose a "unique requirement" on local governments, they do not meet the second definition of "program" established by *Los Angeles.*
>
> FN4. An affidavit submitted by State in support of its motion for summary judgment established that 92.1 percent of the elevators subject to these regulations are privately owned, while only 7.9 percent are publicly owned or operated.
>
> Nor is the first definition of "program" met. ¶ …¶ In determining whether these regulations are a program, the critical question is whether the mandated program carries out the governmental function of providing services to the public, not whether the elevators can be used to obtain these services. Providing elevators equipped with fire and earthquake safety features simply is not "a governmental function of providing services to the public." FN5
>
> FN5. This case is therefore unlike *Lucia Mar, supra,* in which the court found the education of handicapped children to be a governmental function (44 Cal.3d at p. 835, 244 Cal.Rptr. 677, 750 P.2d 318) and *Carmel Valley, supra,* where the court reached a similar conclusion regarding fire protection services. (190 Cal.App.3d at p. 537, 234 Cal.Rptr. 795.)

In this case, the statutory requirements apply equally to public and private employers of any individuals described as mandated reporters within CANRA. The alternative prong of demonstrating that the law carries out the governmental function of providing a service to the public is also not met. In this case, staff finds that informing newly-employed mandated reporters of their legal obligations to report suspected child abuse or neglect is not inherently a *governmental function* of providing service to the public, any more than providing safe elevators.

The claimant, in comments filed November 7, 2007, argues that this is not a law of general application, and "[t]he mandated reporting system is the basis of a distinctly governmental and penal system of investigation of child abuse, which is not within the purview of private persons or entities." Similar arguments were made in the claimant's comments dated June 22, 2009. While the investigation and prosecution of alleged child abuse and neglect is certainly the role of governmental entities, defined mandated reporters have not been confined to the realm of government. Rather the role has been extended to a vast and diverse group of individuals who, through their work, may encounter suspected child abuse and neglect. Claimant offers no factual evidence to support the proposition that "the absolute number of persons who are mandated reporters would probably be government employees as the super majority."[101] Penal Code section 11166.5 places a duty on all employers of mandated reporters listed in section 11165.7—this duty applies whether the employer is private or public. Therefore, staff finds that Penal Code section 11166.5 does not mandate a new program or higher level of service on school districts.

[101] Claimant Comments, November 7, 2007, page 3. (Exhibit G.)

Issue 3: Do the test claim statutes found to mandate a new program or higher level of service also impose costs mandated by the state pursuant to Government Code section 17514?

Reimbursement under article XIII B, section 6 is required only if any new program or higher level of service is also found to impose "costs mandated by the state." 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 or executive order that mandates a new program or higher level of service. The claimant alleges costs in excess of $200, the minimum standard at the time of filing the test claim, pursuant to Government Code section 17564. A declaration of costs incurred was also submitted by the San Jose Unified School District.[102] Government Code section 17556 provides exceptions to finding costs mandated by the state. Staff finds that none have applicability to deny this test claim. Thus, for the activities listed in the conclusion below, staff finds accordingly that the new program or higher level of service also imposes costs mandated by the state within the meaning of Government Code section 17514, and none of the exceptions of Government Code section 17556 apply.

CONCLUSION

Staff concludes that Penal Code sections 11165.7 and 11174.3, as added or amended by Statutes 1987, chapters 640 and 1459, Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 1998, chapter 311, Statutes 2000, chapter 916, and Statutes 2001, chapters 133 and 754; mandate new programs or higher levels of service for K-12 school districts within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

- Reporting to the State Department of Education the reasons why training is not provided, whenever school districts do not train their employees specified in Penal Code section 11165.7, subdivision (a), in the duties of mandated reporters under the child abuse reporting laws. (Pen. Code, § 11165.7, subd. (d).)[103]

- Informing a selected member of the staff of the following requirements prior to the interview whenever a suspected victim of child abuse or neglect is to be interviewed during school hours, on school premises, and has requested that a staff member of the school be present at the interview:

> The purpose of the staff person's presence at the interview is to lend support to the child and enable him or her to be as comfortable as possible. However, the member of the staff so elected shall not participate in the interview. The member of the staff so present shall not discuss the facts or circumstances of the case with the child. The member of the staff so present, including, but not limited to, a volunteer aide, is subject to the confidentiality requirements of this article, a violation of which is punishable as specified in Penal Code section 11167.5. A staff member

[102] Test claim filing, Exhibit 1. (Exhibit A.)

[103] Added by Statutes 1987, chapter 1459; amended by Statutes 1991, chapter 132, Statutes 1992, chapter 459, Statutes 2000, chapter 916, Statutes 2001, chapter 133 (urgency), and Statutes 2001, chapter 754. Reimbursement for this activity begins July 1, 2000, based on the test claim filing date; the reimbursable activity was not substantively altered by later operative amendments.

> selected by a child may decline the request to be present at the interview. If the staff person selected agrees to be present, the interview shall be held at a time during school hours when it does not involve an expense to the school. (Pen. Code, § 11174.3, subd. (a).)[104]

The period of reimbursement for these activities begins July 1, 2000.

Staff further concludes that the test claim statutes, executive orders and allegations not specifically approved above, do not mandate a new program or higher level of service, or impose costs mandated by the state under article XIII B, section 6.

Staff Recommendation

Staff recommends the Commission adopt this staff analysis to partially approve this test claim for K-12 school districts.

[104] Added by Statutes 1987, chapter 640, and amended by Statutes 1998, chapter 311, Statutes 2000, chapter 916. Reimbursement for this activity begins July 1, 2000, based on the test claim filing date; the reimbursable activity was not substantively altered by later operative amendments.