

COMMISSION ON STATE MANDATES

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November 18, 2015

Ms. Lisa Mierczynski
Department of Finance
915 L Street, 12th Floor
Sacramento, CA 95814

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

Re: Proposed Decision

Mandate Redetermination Request, 14-MR-05

First Hearing: Adequate Showing

Behavioral Intervention Plans (CSM-4464)

California Code of Regulations, Title 5, Sections 3001 and 3052, as added or amended by Register 93, No. 17; Register 96, No. 8; Register 96, No. 32

As Alleged to be Modified by Statutes 2013, Chapter 48 (AB 86)

Department of Finance, Requester

Dear Ms. Mierczynski:

The proposed decision for the above-named matter is enclosed.

Hearing

This matter is set for hearing on **December 3, 2015**, at 10:00 a.m., State Capitol, Room 447, Sacramento, California. Please let us know in advance if you or a representative of your agency will testify at the hearing, and if other witnesses will appear. If you would like to request postponement of the hearing, please refer to section 1187.9(b) of the Commission's regulations.

Special Accommodations

For any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission office at least five to seven *working* days prior to the meeting.

Sincerely,

A handwritten signature in black ink, appearing to read "Heather Halsey".

Heather Halsey
Executive Director

ITEM 5
MANDATE REDETERMINATION
FIRST HEARING: ADEQUATE SHOWING
PROPOSED DECISION

California Code of Regulations, Title 5, Sections 3001 and 3052, as added or amended by
Register 93, No. 17; Register 96, No. 8; Register 96, No. 32

As Alleged to be Modified by:
Statutes 2013, Chapter 48 (AB 86)

Behavioral Intervention Plans (CSM-4464)

14-MR-05

Department of Finance, Requester

EXECUTIVE SUMMARY

Overview

On September 28, 2000, the Commission on State Mandates (Commission) adopted a statement of decision finding that regulations in title 5, California Code of Regulations, sections 3001 and 3052, which implement Education Code section 56523, impose a reimbursable state-mandated new program, related to *Behavioral Intervention Plans (BIPs)*, on school districts and special education local plan areas (SELPA) within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514. The Commission approved the test claim for the following categories of reimbursable activities:

- SELPA plan requirements. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052(j).)
- Development and implementation of behavioral intervention plans (BIPs). (Cal. Code of Regs., tit. 5, §§ 3001 and 3052(a), (c), (d), (e), and (f).)
- Functional analysis assessments. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052(b), (c), and (f).)
- Modifications and contingent BIPs. (Cal. Code of Regs., tit. 5, § 3052(g) and (h).)
- Development and implementation of emergency interventions. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052(i).)
- Prohibited behavioral interventions. (Cal. Code of Regs., tit. 5, §§ 3001 and 3052(l).)
- Due process hearings. (Cal. Code of Regs., tit. 5, § 3052(m).)

On January 25, 2013, after much delay for reasons discussed at length in the statement of decision on parameters and guidelines, the parameters and guidelines were approved as modified by the Commission for costs incurred beginning July 1, 1993, and the statement of decision was

adopted April 19, 2013 and corrected on April 29, 2013.¹ The parameters and guidelines contain three reasonable reimbursement methodologies (RRMs): one for one-time activities required in the 1993-1994 school year; one for ongoing SELPA-level activities; and one for ongoing county-level activities.²

On July 1, 2013, the Governor signed AB 86 (Stats. 2013, ch. 48), effective the same day, which amended numerous provisions of the Education Code, including section 56523; the Education Code section that the previously-approved test claim regulations were adopted to implement. As amended, section 56523 now provides that “[t]he Superintendent shall repeal those regulations governing the use of behavioral interventions...including Section 3052 and subdivisions (d), (e), (f), (g), and (ab) of Section 3001 of Title 5 of the California Code of Regulations, as those provisions existed on January 10, 2013.” The State Board of Education has, accordingly, since repealed those regulations, as specified.³

Procedural History

On June 30, 2015, the Department of Finance (Finance) filed a request for redetermination of the *Behavioral Intervention Plans (BIPs)* test claim statement of decision, CSM-4464, based on the repeal of the regulations approved in the test claim decision and parameters and guidelines.⁴

On August 10, 2015, the State Controller’s Office (Controller) filed comments concurring with Finance’s request.⁵ On September 23, 2015, Commission staff issued the draft proposed decision for the first hearing on the mandate redetermination.⁶ The Controller filed comments on the draft proposed decision for the first hearing on October 8, 2015.⁷ Neither Finance nor any of the claimants filed comments on the draft proposed decision for the first hearing.

Commission Responsibilities

Government Code section 17570 provides a process whereby a previously determined mandate finding can be redetermined by the Commission, based on a subsequent change in law. The redetermination process provides for a two hearing process. The Commission’s regulations state:

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

¹ See Exhibit C, Statement of Decision and Parameters and Guidelines, Corrected April 29, 2013.

² See Exhibit C, Statement of Decision and Parameters and Guidelines, Corrected April 29, 2013.

³ Register 2013, No. 42 (October 16, 2013); Register 2014, No. 19 (July 1, 2014).

⁴ Exhibit A, Request for Mandate Redetermination.

⁵ Exhibit D, Controller’s Comments on Request for Redetermination.

⁶ Exhibit E, Draft Proposed Decision.

⁷ Exhibit F, Controller’s Comments on the Draft Proposed Decision, First Hearing.

the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.⁸

A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.⁹

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

The Commission shall find that the requester has made an adequate showing if it finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.¹⁰

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

The requester has made an adequate showing, when considered in light of all of the written comments, rebuttals and supporting documentation in the record and testimony at the hearing, the Commission shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.¹¹

Thus, the first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission’s regulations, only whether the requester has made an adequate showing that the state’s liability may be modified based on a subsequent change in law, as defined. Therefore, this analysis will be limited to whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”¹² If the Commission finds that there has been an adequate showing, a thorough mandates analysis to determine whether and to what extent the state’s liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

⁸ Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

⁹ Government Code section 17570, as added by Statutes 2010, chapter 719.

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

¹¹ Code of Regulations, title 2, section 1190.5 (a)(5)(B) (Register 2014, No. 21).

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

Staff Analysis

A. Statutes 2013, Chapter 48 Constitutes a Subsequent Change in Law, as Defined.

This request for redetermination alleges a subsequent change in law that requires a finding that there are no costs mandated by the state pursuant to section 17514, in that Statutes 2013, chapter 48 requires the repeal of the regulatory provisions that make up the mandate, and purports also to remove all force and effect of those regulatory provisions. Education Code section 56523, as amended by Statutes 2013, chapter 48, requires the Superintendent of Public Instruction to “repeal those regulations governing the use of behavioral interventions...that are no longer supported by statute, including Section 3052 and subdivisions (d), (e), (f), (g), and (ab) of Section 3001 of Title 5 of the California Code of Regulations...”¹³

Accordingly, the specified sections have been repealed.¹⁴ Only sections 3001 and 3052 of title 5 of the California Code of Regulations were approved in the Commission’s September 28, 2000 test claim decision (corrected November 23, 2010).¹⁵ Therefore, staff finds that amended Education Code section 56523 and the subsequent repeal of the subject regulations constitutes a subsequent change in law, as defined.

B. The Requester Has Made an Adequate Showing that the State’s Liability May Be Modified Based on a Subsequent Change in Law, Such that Finance Has a Substantial Probability of Prevailing at the Second Hearing.

At this hearing, the Commission is required to determine whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”¹⁶ The subsequent change in law alleged is an amendment to the Education Code section that expressly disclaims the statutory authorization for the regulations, and directs the Superintendent to repeal the regulations. The regulations were, accordingly, repealed by Register 2013, No. 42, and Register 2014, No. 19, respectively.

Based on the foregoing, staff finds that the requester has made an adequate showing that the state’s liability may be modified based on a subsequent change in law, such that Finance has a substantial probability of prevailing at the second hearing.

Staff Recommendation

Staff recommends that the Commission adopt the proposed decision and, pursuant to Government Code section 17570(b)(d)(4), direct staff to notice the second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision. If the Commission adopts the attached proposed decision, the second hearing for this matter will be set for January 22, 2016.

¹³ Education Code section 56523(a) (Stats. 2013, ch. 48 (AB 86)).

¹⁴ Register 2014, No. 19; Register 2013, No. 42.

¹⁵ Exhibit B, Test Claim Statement of Decision, *Behavioral Intervention Plans*, CSM-4464.

¹⁶ Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

Staff also recommends that the Commission authorize staff to make any non-substantive, technical changes to the proposed decision following the hearing.

BEFORE THE
 COMMISSION ON STATE MANDATES
 STATE OF CALIFORNIA

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

Code of Regulations, Title 5, Sections 3001
 and 3052 as added or amended by

Register 93, No. 17; Register 96, No. 8;
 Register 96, No. 32

As Alleged to be Modified by:
 Statutes 2013, Chapter 48 (AB 86)

Filed on June 30, 2015

By the Department of Finance, Requester

Case No.: 14-MR-05

Behavioral Intervention Plans (CSM-4464)

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

(Adopted December 3, 2015)

DECISION

The Commission on State Mandates (Commission) heard and decided this mandate redetermination during a regularly scheduled hearing on December 3, 2015. [Witness list will be included in the adopted decision.]

The law applicable to the Commission’s determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., title 2, California Code of Regulations 1181 et seq., and related case law.

The Commission [adopted/modified] the proposed decision at the hearing by a vote of [vote count will be included in the adopted decision], and [directed/did not direct] staff to notice a second hearing to determine whether to adopt a new test claim decision to supersede the previously adopted test claim decision. The Commission voted as follows:

Member	Vote
Ken Alex, Director of the Office of Planning and Research	
Richard Chivaro, Representative of the State Controller, Vice Chairperson	
Mark Hariri, Representative of the State Treasurer	
Sarah Olsen, Public Member	
Eraina Ortega, Representative of the Director of the Department of Finance, Chairperson	
Carmen Ramirez, City Council Member	
Don Saylor, County Supervisor	

SUMMARY OF THE FINDINGS

The Commission finds that the Department of Finance (Finance) has made an adequate showing that the state's liability pursuant to article XIII B, section 6(a) of the California Constitution, for the *Behavioral Intervention Plans*, CSM-4464 mandate may be modified based on a subsequent change in law, such that Finance has a substantial probability of prevailing at the second hearing. Specifically, Statutes 2013, chapter 48, section 44 (AB 86) expressly requires the Superintendent of Public Instruction to repeal the regulations that impose the mandate, and declares that those sections "are no longer supported by statute." Pursuant to Government Code section 17570(b)(d)(4), the Commission will hold a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.

COMMISSION FINDINGS

I. Chronology

- | | |
|------------|--|
| 09/28/2000 | The Commission adopted the test claim statement of decision on <i>Behavioral Intervention Plans</i> , CSM-4464 which was corrected on November 23, 2010. ¹⁷ |
| 04/19/2013 | The Commission adopted the statement of decision and parameters and guidelines for <i>Behavioral Intervention Plans</i> , CSM-4464 which were corrected on April 29, 2013. ¹⁸ |
| 06/30/2015 | Finance filed a request for redetermination on the <i>Behavioral Intervention Plans</i> mandate, CSM-4464. ¹⁹ |
| 08/10/2015 | The State Controller's Office (Controller) filed comments on the request for redetermination. ²⁰ |
| 09/23/2015 | Commission staff issued the draft proposed decision for the first hearing. ²¹ |
| 10/08/2015 | The Controller filed comments on the draft proposed decision for the first hearing. ²² |

II. Background

On September 28, 2000, the Commission adopted a statement of decision finding that regulations in title 5, California Code of Regulations, sections 3001 and 3052, which implement Education Code section 56523, impose a reimbursable state-mandated new program on school districts and special education local plan areas (SELPA) within the meaning of article XIII B, section 6 of

¹⁷ Exhibit B, Test Claim Statement of Decision, *Behavioral Intervention Plans*, CSM-4464.

¹⁸ Exhibit C, Statement of Decision and Parameters and Guidelines, Corrected April 29, 2013.

¹⁹ Exhibit A, Request for Mandate Redetermination, 14-MR-05.

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

²¹ Exhibit E, Draft Proposed Decision, First Hearing.

²² Exhibit F, Controller's Comments on the Draft Proposed Decision, First Hearing.

the California Constitution and Government Code section 17514. The Commission approved the test claim for the following categories of reimbursable activities:

- SELPA plan requirements. (Cal. Code Regs., tit. 5, §§ 3001 and 3052(j).)
- Development and implementation of behavioral intervention plans (BIPs). (Cal. Code Regs., tit. 5, §§ 3001 and 3052(a), (c), (d), (e), and (f).)
- Functional analysis assessments. (Cal. Code Regs., tit. 5, §§ 3001 and 3052(b), (c), and (f).)
- Modifications and contingent BIPs. (Cal. Code Regs., tit. 5, § 3052(g) and (h).)
- Development and implementation of emergency interventions. (Cal. Code Regs., tit. 5, §§ 3001 and 3052(i).)
- Prohibited behavioral interventions. (Cal. Code Regs., tit. 5, §§ 3001 and 3052(l).)
- Due process hearings. (Cal. Code Regs., tit. 5, § 3052(m).)

On January 25, 2013, after much delay for reasons discussed at length in the statement of decision on parameters and guidelines,²³ the parameters and guidelines were approved as modified by the Commission for costs incurred beginning July 1, 1993, and the statement of decision was adopted April 19, 2013 and corrected April 29, 2013.²⁴ The parameters and guidelines contain three reasonable reimbursement methodologies (RRMs): one for one-time activities required in the 1993-1994 school year; one for ongoing SELPA-level activities; and one for ongoing county-level activities.²⁵

On July 1, 2013, the Governor signed AB 86 (Stats. 2013, ch. 48), effective the same day, which amended numerous provisions of the Education Code, including section 56523; the Education Code section that the approved test claim regulations were adopted to implement. As amended, section 56523 now provides that “[t]he Superintendent shall repeal those regulations governing the use of behavioral interventions...including Section 3052 and subdivisions (d), (e), (f), (g), and (ab) of Section 3001 of Title 5 of the California Code of Regulations, as those provisions existed on January 10, 2013.” The State Board has since repealed those regulations, as directed.²⁶

Mandate Redetermination Process under Section 17570

Government Code section 17570 provides a process for a test claim decision to be redetermined and superseded by a new test claim decision if a subsequent change in law, as defined, has modified the state’s liability for reimbursement. The redetermination process calls for a two-hearing process. At the first hearing, the requester must make “an adequate showing which

²³ Exhibit C, Statement of Decision and Parameters and Guidelines, Corrected April 29, 2013, pages 2-5.

²⁴ Exhibit C, Statement of Decision and Parameters and Guidelines, Corrected April 29, 2013.

²⁵ See Exhibit C, Statement of Decision and Parameters and Guidelines, pages 67-68.

²⁶ Register 2014, No. 19 (amended July 1, 2014); Register 2013, No. 42 (repealed October 16, 2013).

identifies a subsequent change in law as defined by Government Code section 17570, material to the prior test claim decision, that may modify the state’s liability pursuant to Article XIII B, section 6(a) of the California Constitution.”²⁷ A subsequent change in law is defined in section 17570 as follows:

[A] change in law that requires a finding that an incurred cost is a cost mandated by the state, as defined by Section 17514, or is not a cost mandated by the state pursuant to Section 17556, or a change in mandates law, except that a “subsequent change in law” does not include the amendments to Section 6 of Article XIII B of the California Constitution that were approved by the voters on November 2, 2004. A “subsequent change in law” also does not include a change in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.²⁸

The Commission shall find that the requester has made an adequate showing if it “finds that the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”²⁹ If the Commission finds at the first hearing, that the requester has made an adequate showing, it “shall publish a decision finding that an adequate showing has been made and setting the second hearing on whether the Commission shall adopt a new test claim decision to supersede the previously adopted test claim decision.”³⁰

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

A. Department of Finance, Requester

Finance asserts that Statutes 2013, chapter 48, effective July 1, 2013, “amended Education Code section 56523 to eliminate the statutory force and effect of the regulations that imposed the reimbursable state-mandated activities and to require the Superintendent of Public Instruction to repeal the regulations that govern behavioral intervention for individuals with exceptional needs that are no longer supported by statute.” Accordingly, Finance states that Code of Regulations, title 5, section 3052 was repealed effective October 16, 2013; and the operative provisions of section 3001, which were identified in the test claim decision as providing context for the mandate, or imposing the mandate, were repealed effective July 1, 2014.³¹

B. State Controller’s Office

²⁷ Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

²⁸ Government Code section 17570, as added by Statutes 2010, chapter 719 (SB 856).

²⁹ Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

³⁰ Code of Regulations, title 2, section 1190.5(a)(5)(B) (Register 2014, No. 21).

³¹ Exhibit A, Request for Mandate Redetermination, 14-MR-05, page 8.

The Controller concurs with Finance’s request to adopt a new test claim decision and amend the parameters and guidelines for the *Behavioral Intervention Plans* mandated program, pursuant to the enactment of Statutes 2013, chapter 48.³²

IV. Discussion

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

The first hearing in the mandate redetermination process is to determine, pursuant to the Government Code and the Commission’s regulations, only whether the requester has made an adequate showing that the state’s liability has been modified based on a subsequent change in law, as defined. Therefore, the analysis will be limited to whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”³³ A thorough mandates analysis to determine whether and to what extent the state’s liability has been modified, considering the applicable law, the arguments put forth by the parties and interested parties, and the facts in the record, will be prepared for the second hearing on this matter.

A. Statutes 2013, Chapter 48 Constitutes a Subsequent Change in Law, Within the Meaning of Government Code Section 17570.

Government Code section 17570 provides a process whereby a test claim decision may be redetermined and superseded by a new test claim decision, if a subsequent change in law, as defined, has altered the state’s liability for reimbursement. A subsequent change in law is defined in section 17570 as follows:

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

³² Exhibit D, Controller’s Comments on Request for Redetermination.

³³ Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21). This regulation describes the standard for the first hearing as follows:

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

in the statutes or executive orders that impose new state-mandated activities and require a finding pursuant to subdivision (a) of Section 17551.³⁴

Under this definition, then, a subsequent change in law is one that (1) requires a finding of a new cost mandated by the state under section 17514; (2) requires a new finding that a cost is not a cost mandated by the state pursuant to section 17556; or (3) another change in mandates law.

Finance, in its request for redetermination, alleges that a subsequent change in law requires a finding that there are no costs mandated by the state pursuant to section 17514, in that Statutes 2013, chapter 48 requires the repeal of the regulatory provisions that make up the mandate, and also purports to remove all force and effect of those regulatory provisions. The original test claim regulations, Code of Regulations, title 5, sections 3001 and 3052, implemented Education Code section 56523, which the Commission found did not itself impose any mandated activities. Amended section 56523, alleged here to modify the state's liability for the mandated program, now provides:

The Superintendent shall repeal those regulations governing the use of behavioral interventions with individuals with exceptional needs receiving special education and related services that are no longer supported by statute, including Section 3052 and subdivisions (d), (e), (f), (g), and (ab) of Section 3001 of Title 5 of the California Code of Regulations, as those provisions existed on January 10, 2013.³⁵

The test claim statement of decision and parameters and guidelines for CSM-4464 found reimbursable activities imposed by Code of Regulations, title 5, sections 3001 and 3052.³⁶ Subsections (d), (e), (f), (g), and (ab) of former section 3001 define the terms "behavioral emergency," "behavioral intervention," "behavioral intervention case manager," "behavioral intervention plan," and "serious behavior problems," and have been repealed, along with a number of other definitional provisions of section 3001.³⁷ In addition, the entirety of section 3052, which described the substantive requirements or elements of behavioral interventions and behavioral intervention plans, has been repealed.³⁸ These two regulatory sections were the only test claim regulations approved in the Commission's September 28, 2000 test claim decision (corrected November 23, 2010),³⁹ and the only regulations on which the RRM in the parameters

³⁴ Government Code section 17570 (Stats. 2010, ch. 719 (SB 856)).

³⁵ Education Code section 56523(a) (Stats. 2013, ch. 48 (AB 86)).

³⁶ See, e.g., Exhibit C, Statement of Decision and Parameters and Guidelines, Corrected April 29, 2013, page 65.

³⁷ Register 2014, No. 19.

³⁸ Register 2013, No. 42.

³⁹ Exhibit B, Test Claim Statement of Decision, *Behavioral Intervention Plans*, CSM-4464.

and guidelines was based.⁴⁰ Therefore, all regulatory sections found to impose activities in the test claim have been repealed pursuant to Statutes 2013, chapter 48.

Based on the foregoing, the Commission finds that Statutes 2013, chapter 48, constitutes a subsequent change in law, as defined.

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

At this hearing, the Commission is required to determine whether “the request, when considered in light of all of the written comments and supporting documentation in the record of this request, has a substantial possibility of prevailing at the second hearing.”⁴¹ If the Commission determines that the request has a substantial possibility of prevailing at the second hearing, the Government Code provides that the Commission shall notice a second hearing to determine if a new test claim decision shall be adopted to supersede the previously adopted test claim decision.⁴²

Here, the subsequent change in law is an amendment to the Education Code section underlying the approved test claim regulations, which expressly disclaims the statutory authorization for the regulations, and directs the Superintendent to repeal the regulations. The regulations were, accordingly, repealed by Register 2013, No. 42, and Register 2014, No. 19. Therefore, Education Code section 56523, and the repealed regulations, constitute an adequate showing that the state’s liability may be modified based on a subsequent change in law, such that Finance has a substantial probability of prevailing at the second hearing.

V. Conclusion

Based on the foregoing, the Commission finds that the requester has made an adequate showing that the state’s liability for the *Behavioral Intervention Plans*, CSM-4464 mandate may be modified based on a subsequent change in law and that Finance has a substantial probability of prevailing at the second hearing. The Commission hereby directs Commission staff to notice the second hearing to determine whether to adopt a new test claim decision to supersede the Commission’s previously adopted test claim decision on *Behavioral Intervention Plans*, CSM-4464.

⁴⁰ Exhibit C, Statement of Decision and Parameters and Guidelines, Corrected April 29, 2013, page 65.

⁴¹ Code of Regulations, title 2, section 1190.5(a)(1) (Register 2014, No. 21).

⁴² Government Code section 17570(d)(4) (Stats. 2010, ch. 719 (SB 856)).

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

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

On November 18, 2015, I served the:

Proposed Decision

Mandate Redetermination Request, 14-MR-05

First Hearing: Adequate Showing

Behavioral Intervention Plans (CSM-4464)

California Code of Regulations, Title 5, Sections 3001 and 3052, as added or amended by Register 93, No. 17; Register 96, No. 8; Register 96, No. 32

As Alleged to be Modified by Statutes 2013, Chapter 48 (AB 86)

California Department of Finance, Requester

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on November 18, 2015 at Sacramento, California.



Jill L. Magee

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 10/29/15

Claim Number: 14-MR-05

Matter: Behavioral Intervention Plans (CSM-4464)

Requester: Department of Finance

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

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

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Socorro Aquino, *State Controller's Office*

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