

SixTen and Associates

Mandate Reimbursement Services

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December 19, 2002

RECEIVED

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**COMMISSION ON
STATE MANDATES**

Paula Higashi, Executive Director
Commission on State Mandates
U.S. Bank Plaza Building
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: Test Claim 01-TC-21
San Bernardino Community College District
Child Abuse and Neglect Reporting

Dear Ms. Higashi:

I have received the response of the Department of Finance ("DOF"), authored by the Attorney General's Office, dated November 26, 2002 to which I now respond on behalf of the test claimant.

It should be noted, as a threshold matter, that none of the objections of the DOF are relevant to the statutory exceptions to a finding of costs mandated by the state. (Government Code Section 17556)

1. **The Comments of the DOF are Incompetent and Should be Excluded**

Test claimant objects to the response of the DOF, in total, as being legally incompetent and move that they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

"...written response, opposition, or recommendations and supporting documentation shall 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 or information and belief."

The DOF's comments do not comply with this essential requirement. Hence the entire document is incompetent and should be excluded from the record.

2. Test Claimant Has Complied With All Procedural Requirements

DOF argues that the Title 2 Regulations require a "test claim to identify the *specific sections* of a chaptered bill or executive order alleged to contain a mandate...(I)instead of identifying the specific sections of these bills and statutes that allegedly contain a mandate, the District describes in abundant and unnecessary detail virtually every statutory change made by each of these session laws, whether or not those changes have any bearing on the District's test claim."

The Title 2 Regulations require more than just that. Section 1183(e) states that "All test claims...shall contain at least the following elements and documents." (Emphasis supplied) Subsection (3) requires a "written narrative which includes a detailed description of (A) What activities were required under prior law or executive order, and (B) What new program or higher level of service is required under the statute or executive order alleged to contain or impact a mandate, and (C) Whether there are any costs mandated by the state as defined in Government Code sections 17514 and 17556." (Emphasis supplied) The narrative, then, must contain a detailed description of what activities were required under prior law prior to 1975. This is found in the test claim at page 3, line 5 through page 5, line 17.

A narrative must also contain a detailed description of a statutory history of both the pre-1975 and the post-1974 statutes to show how pre-1975 duties have been changed or modified and to show how post-1974 duties have impacted the mandate by adding to or modifying, prior statutes. The goal of a narrative is to show what duties existed prior to 1975 and what duties have been added, modified or changed since 1974. In this particular test claim it is necessary to show who was required to report what, to whom, and when, prior to 1975 and how the law has evolved to show who is now required to report what, to whom, and when. Each and every change of the law, and each and every new law, throughout the narrative of the test claimant cites the specific chapter, year and section of the legislation.

The final requirement of the narrative, whether there are any costs mandated by the state, is found in the test claim at page 121, line 5, through page 122, line 5. It is therefore abundantly apparent that the test claimant has complied with the procedural requirements of Section 1183(e).

3. Some Employees of Community College Districts are Mandated Reporters

DOF next argues that "...the 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."

Penal Code Section 11165.7, at subdivision (a)(1) includes "a teacher" within the definition of a mandated reporter. The inclusion of "teachers" is without limitation and DOF cites no authority to support its argument that instructors employed by community college districts are not "teachers".

In addition, subdivision (a)(8) includes within the definition of mandated reporters "An administrator or employee of a public or private organization whose duties require direct contact and supervision of children." Test claimant's declarant, Juliann Martin, states that she is the Chair of the Child Development and Family Consumer Science department of the district. In that capacity, she, and those of her department, are administrators and/or employees of a public organization whose duties require direct contact and supervision of children.

4. The Declaration of Michael Carr is both Competent and Relevant

DOF next argues that "...the Department moves to strike the declaration of Michael Carr...(T)he statements of Mr. Carr concerning the costs allegedly incurred by the San Jose Unified School District...do not authenticate the factual assertions made by the claimant, as required by 2 CCR section 1183(e)(4)."

First all, "costs alleged" do not require authentication. Section 1183(e)(4) only requires the authentication of "documentary evidence". This follows the well-known principle of law that only documents require authentication. An allegation of "actual and/or estimated costs...(that) exceed two hundred dollars (\$200)" is made by a "statement", pursuant to subdivision (e)(5). The declaration of Mr. Carr makes no separate assertions of fact, it merely states that, in his capacity as the Director of Student Services, he is familiar with the training and reporting requirements of the code sections cited and "(l)t is estimated that the...District has incurred in excess of \$200, annually,...to implement these new duties..." Pursuant to subdivision (e)(6), the test claim itself (which alleges new duties and costs for school districts, county offices of education and community college districts) "shall be signed at the end of the document, under penalty of perjury by the claimant..." This requirement is found following page 128 of the test claim.

In conclusion, the response of the DOF should be ignored as legally incompetent for its

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failure to comply with Section 1183.02 of Title 5, California Code of Regulations. In addition, each of the arguments contained therein are factually and legally incorrect and should be disregarded.

CERTIFICATION

I certify by my signature below, under penalty of perjury, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith B. Petersen". The signature is fluid and cursive, with a long horizontal flourish at the end.

Keith B. Petersen

C: Per Mailing List Attached

Commission on State Mandates

Original List Date: 07/03/2002 Mailing Information Other

Last Updated: 08/05/2002

List Print Date: 08/12/2002

Claim Number: 01-TC-21

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Mailing List

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TO ALL PARTIES AND INTERESTED PARTIES: 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, § 1181.2.)