

COMMISSION ON STATE MANDATES

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December 31, 2003²

Mr. Keith Petersen
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And Affected State Agencies and Interested Parties (see enclosed mailing list)

Re: *Child Abuse and Neglect Reporting*; 01-TC-21
San Bernardino Community College District, Claimant
Penal Code Sections 273a, 11161.5, 11161.6, 11161.7, 11164, 11165, 11165.1,
11165.2, 11165.3, 11165.4, 11165.5, 11165.6, 11165.7, 11165.9, 11165.14, 11166,
11166.5, 11168, 11174.3
Statutes 2001, Chapter 754 et al. (AB 1697)

Dear Mr. Petersen:

In a letter dated July 8, 2002, the above-named test claim was sent to affected state agencies and interested parties seeking input on:

- Whether the provisions included in the test claim (i.e., the specific statutes referenced in the claim) impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?

On November 25 and 26, 2002, the Department of Social Services and the Department of Justice, respectively, responded to the Commission's July 8, 2002 letter. These letters raise procedural and substantive issues concerning the test claim as it was submitted. The 30-day period for rebutting state agency comments expired on December 26, 2002. Since we did not receive a rebuttal from you and because the active participation of affected state agencies is extremely important in the mandate determination process, I am requesting that you respond to their allegations by January 31, 2003. Copies of these letters, which were served on the mailing list, are enclosed.

Mr. Keith Petersen
Page 2

Please contact Nancy Patton at (916) 323-8217 if you have any questions.

Sincerely,



PAULA HIGASHI
Executive Director

Enclosures

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DEPARTMENT OF SOCIAL SERVICES**Legal Division**

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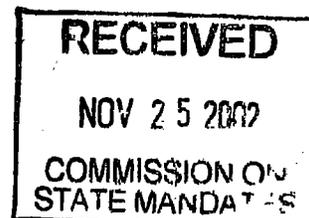
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November 25, 2002

Paula Higashi, Executive Director
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RE: Child Abuse and Neglect Reporting, 01-TC-21
San Bernardino Community College District, Claimant

Dear Ms. Higashi:

The California Department of Social Services (Department) submits the following preliminary comments to the test claim submitted by the San Bernardino Community College District regarding Interagency Child Abuse and Neglect (ICAN) Investigation Reports (01-TC-21) (Test Claim). It is the Department's position that the form and content of the Test Claim are fatally inadequate. The Claimant has failed 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).

Title 2, California Code of Regulations (CCR), section 1183(e)(3) requires that: "All test claims or amendments thereto shall contain at least the following elements and documents:

- (A) A written narrative which includes a detailed description of 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.

The Claimant has failed 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). Attaching 125 pages of statutory material, with pages upon pages of historical information for each section included, does not appear to satisfy this specificity requirement. The only discussion in the Test Claim which purportedly details what new program or higher level of service state law has allegedly required of the claimant is found in Part III,

commencing on page 121 of the Test Claim. According to Claimant, "new duties are mandated". (Test Claim, page 122 line 6) The description of exactly what these new duties are however cannot be discerned from the Test Claim.

Efforts to harvest specific factual assertions made by claimant in support of the proposition that it has incurred additional costs as a result of state mandates imposed subsequent to 1975 reveal very slim pickings. It is claimed for example that a mandated reporter must report facts to certain agencies. (See Test Claim, page 122, lines 11-17) Nowhere in the Test Claim does Claimant proffer information of how these activities differ from the reporting requirements which pre-existed 1975. Claimants assert that failure to comply with mandatory reporting requirements is a misdemeanor. (See Test Claim, page 122, lines 17-18 through page 123 line 2.) Nowhere in the Test Claim does Claimant proffer information of whether this fact differs in any way from facts which pre-existed 1975, or how the fact that a failure to report is a misdemeanor imposes any new activities upon Claimant.

Claimant asserts that Penal Code Section 11168 requires specific forms to be used by mandated reporters. (See Test Claim, page 123 lines 3-5.) Nowhere in the Test Claim does Claimant proffer information of whether use of this form results in increased activities or responsibilities. For all we know from the Test Claim, the use of the form actually reduces workload on mandatory reporters as compared to the type of information required to be reported prior to 1975.

Claimant asserts that the requirement found in Penal Code Section 11166(a) requiring reporting within 36 hours imposes additional costs. (See Test Claim, page 123 lines 7-9) Nowhere in the Test Claim does Claimant proffer information of how imposition of a deadline for the performance of a pre-existing mandated activity itself creates additional work. The issue of when one has to perform a mandated task is not probative to the question of whether new activities have been mandated.

Claimant's assertion that Penal Code Section 11165.14 imposes a duty to cooperate and assist law enforcement agencies lacks necessary evidentiary support. (See Test Claim, page 123 lines 10-12) First, Penal Code Section 11165.14 on its face imposes no such duty. Second, even assuming that such a duty is imposed, Claimant has not described what those duties are, or whether or not those duties are in excess of what reporting laws required prior to 1975.

Claimant asserts that Penal Code Section 11174.3 imposes a new mandated duty for a selected staff member to be present at an interview of a suspected victim when the victim so requests. (See Test Claim, page 123 lines 13-15) A closer examination of the statute however reveals that the selected staff member may decline the request to be present, and that the presence of the staff member is voluntary. The optional nature of the staff member's participation in the interview negates the mandate claim. Moreover, Claimant has failed to present any facts to support its view that this alleged mandate imposes responsibilities in excess of that which was required under law in 1975.

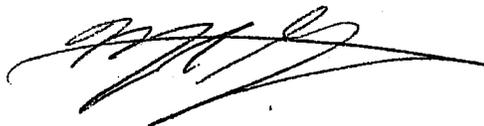
Claimant also asserts that Penal Code Section 11165.7 imposes mandated reporter training. (See Test Claim, page 123 lines 16-23) However, Claimant concedes that the training is optional, and can be avoided if it reports to the State Department of Education why such training was not provided. The form 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 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.

Finally, Claimant asserts that Penal Code Section 11166.5 imposes a responsibility to obtain a signed statement from an employee that he or she acknowledges their reporting requirements. (See Test Claim, page 123 lines 14-28) Claimant however fails to proffer any evidence that it was necessary to modify employment forms or that employment forms were so modified. Moreover, Claimant has not provided any facts to support its view that activities associated with this requirement are in excess of that which was required under law in 1975.

In sum, Claimant has not provided a detailed description of what activities were required under prior law and what new program or higher level of service is required under the statute to contain or impact a mandate, as required by the Commission's Regulations at Title 2, California Code of Regulations (CCR), section 1183(e)(3). Without specific factual allegations to support Claimant's assertions, the Department is left to speculate what those additional mandated activities may be. Accordingly, the Department cannot discern sufficient information from the Test Claim to formulate a proper substantive response to it. Because the Test Claim lacks necessary elements under law, and because of those deficiencies noted herein, the Department cannot reasonably formulate a response on the merits of the claim the claim must be rejected by the Commission. The Department however reserves its right to respond on the merits should the Commission determine that the Test Claim complies with Title 2, California Code of Regulations (CCR), section 1183(e)(3).

For the reasons stated in these comments, San Bernardino Community College District's test claim regarding interagency child abuse and neglect reporting should be denied.

Respectfully submitted,



MARK GINSBERG
Staff Attorney
California Department of Social Services

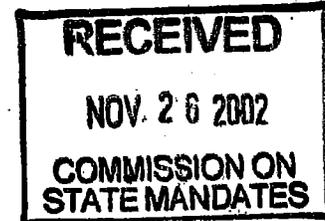


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November 26, 2002

Paula Higashi, Executive Director
Commission on State Mandates
980 9th Street, Suite 300
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RE: Child Abuse and Neglect Reporting (01-TC-21)

Dear Ms. Higashi:

Before commenting briefly on the test claim submitted by the San Bernardino Community College District ("District") regarding Child Abuse and Neglect Reporting (01-TC-21), the Department of Finance ("Department") by this filing objects to the form and content of the test claim and supporting declarations, and requests that the Commission reject the test claim for failure to comply with Commission regulations. In the alternative, the Department requests that the Commission return the test claim to the District with instructions to resubmit a package that complies with the regulations governing the form and content of test claims. The Department specifically reserves the right to submit additional written comments and argument in response to a more specific test claim, and/or in response to the Commission's draft analysis.

Procedural Objections

Title 2, California Code of Regulations (CCR), section 1183(e) requires a test claim to identify the *specific sections* of a chaptered bill or executive order alleged to contain a mandate. The District's test claim contains 53 chaptered bills affecting at least 19 lengthy sections of the Penal Code. 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.

For example, the District states, "Chapter 1117, Statutes of 1980, Section 4 amended Penal Code Section 273a to specify possible state prison terms for a violation of Section 273a." (Test Claim, p. 16.) As a second example, the District states, "Chapter 905, Statutes of 1982, Section 1 amended Penal Code Section 11165 to add subdivision (l) to define 'commercial film and photographic print processor.'" (Test Claim, pp. 25-26.) Neither of these statutory changes would appear to have any relevance to a test claim that purports to identify costs to the District

associated with child abuse and neglect reporting. The test claim is replete with such irrelevant references. The Department requests that the Commission reject the claim for failure to comply with the specificity requirement in 2 CCR section 1183(e). In the alternative, the Department asks the Commission to strike all statements in the test claim that do not identify individual statutory sections alleged to contain a mandate affecting the District, or direct the District to do so.

Title 2 CCR section 1183(e)(3)(A) requires a claimant to identify the activities required under prior law, and section 1183(e)(3)(B) requires the claimant to identify the new program or higher level of service required under the applicable statute or executive order. Section 1183(e)(3)(c) requires the claimant to indicate whether there are costs to the claimant associated with the new program or higher level of service. Read together, these provisions appear to require the claimant to explain, for each statute alleged to contain a mandate, what duties were imposed under prior law, and how each statute imposes a new program or higher level of service *on the claimant*. Title 2 CCR section 1183(e)(5) appears to require the claimant to state that the alleged mandate contained in each statute identified results in costs to the claimant, or is estimated to result in costs to the claimant, in excess of \$200. The District's claim does none of these things.

Substantive Objections

The District's claim states, "The new duties mandated by the state upon school districts, county offices of education, and community college districts require state reimbursement" (Test Claim, p. 122.) However, 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. While several versions of this section mention teachers and various school district employees, none of the enactments of this section cited by the claimant 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.) Since community college employees are not mandated reporters, the reports they make pursuant to the child abuse reporting laws, while desirable from a social policy standpoint, are not state-mandated within the meaning of Government Code section 17514. On this basis, the District's test claim should be denied.

As a final matter, the Department moves to strike the declaration of Michael Carr, Director of Student Services at the San Jose Unified School District. The statements of Mr. Carr concerning the costs allegedly incurred by the San Jose Unified School District in implementing the statutory child abuse reporting scheme 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.

Paula Higashi, Executive Director
November 26, 2002
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As previously stated, the Department specifically reserves the right to submit additional comments in the event a corrected and/or more specific test claim is required, or in response to the Commission's draft analysis of the test claim, pursuant to 2 CCR section 1183.07.

Sincerely,



MEG HALLORAN
Deputy Attorney General

For BILL LOCKYER
Attorney General

cc: Susan S. Geanacou, Senior Staff Attorney, Department of Finance
Don Rascon, Principal Analyst, Department of Finance

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Child Abuse and Neglect Reporting;** No.: 01-TC-21
San Bernardino Community College District, Claimant
Penal Code Sections 273a, 11161.5, 11161.6, 11161.7,
11164, 11165, 11165.1, 11165.2, 11165.3, 11165.5, 11165.7,
11165.9, 11165.14, 11166, 11166.5, 11168, 11174.3
Statutes 2001, Chapter 754 et al. (AB 1697)

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 1300 I Street, P.O. Box 944255, Sacramento, California 94244-2550.

On November 26, 2002, I served the attached **Preliminary Comments on Test Claim 01-TC-02, Child Abuse and Neglect Reporting** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Sacramento, California, addressed as follows:

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 26, 2002, at Sacramento, California.

SCOTT A. TAYLOR

Declarant



Signature

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Commission on State Mandates

Original List Date: 7/3/2002
Last Updated: 8/29/2002
List Print Date: 12/31/2002
Claim Number: 01-TC-21
Issue: Child Abuse and Neglect Reporting

Mailing Information: Other

Mailing List

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.)

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