

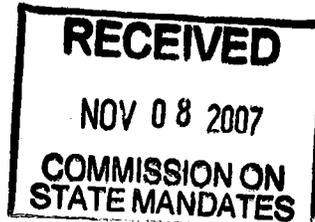
SixTen and Associates Mandate Reimbursement Services

KEITH B. PETERSEN, MPA, JD, President
E-Mail: Kbpsixten@aol.com

San Diego
5252 Balboa Avenue, Suite 900
San Diego, CA 92117
Telephone: (858) 514-8605
Fax: (858) 514-8645

Sacramento
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834
Telephone: (916) 565-6104
Fax: (916) 564-6103

November 7, 2007



Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, California 95814

Re: 01-TC-21
San Bernardino Community College District
Chapter 226, Statutes of 1975, et al
Child Abuse and Neglect Reporting

Dear Ms. Higashi:

I have received a copy of the Draft Staff Analysis dated October 17, 2007, for the above referenced test claim, to which I respond on behalf of the test claimant.

1. New crime exclusion to reimbursement (Sections 11165.9, 11166, and 11168)

The Draft Staff Analysis (DSA) concludes (DSA 12, 13) as a threshold finding of law, that Penal Codes Sections 11165.9, 11166, and 11168 (including former Section 11161.7) do not mandate a new program or higher level of services based on the Article XIII B, Section 6-exception to reimbursement for legislation which defines a new crime or changes an existing definition of a crime. However, the DSA does not cite or analyze any court cases which construe this provision for its relevance to the mandated activities alleged by the test claim.

Commission staff 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).

Since the constitutional exception to reimbursement is not applicable, staff now has to return to these code sections and make findings which compare the duties and scope of the code sections prior to 1975 with those code sections subsequent to 1974. CANRA includes more persons in the school system as mandated reporters so there is an increased level of service for the public. The statutes prior to 1975 (Sections 273a added in 1905 and 11161.5 added in 1963) essentially limited reportable events to wilful molestation and physical abuse. The post-1974 CANRA statutes add as new duties the entire scope of "neglect" offenses to be reported, which constitutes an increased level of service. However, the DSA (14) alleges that the pre-1975 definition of abuse and neglect is "very broad" and "sweeping" which somehow encompasses all possible future definitions. To the contrary, the new CANRA definitions are each precise, specifically enumerated, and evolved over time by numerous amendments to the code. The attempt to bootstrap all post-1974 incidents subject to reporting to pre-1975 definitions is without foundation. Further, the practice of drafting in all future amendments to prior law is contrary to the Commission staff's reliance on the "plain meaning" of the statutes when other forms of analysis fail, that is, if the new definitions are essentially the same, why would the Legislature make dozens of amendments to the old definitions? The "plain meaning" of the amendments over time is to add or change definitions.

2. Training activities (Section 11165.7)

The DSA (18) concludes that training mandated reporters is not required and not reimbursable, but to the contrary concludes that informing the Department of Education when training is not provided is required and reimbursable. The DSA (18) cites *City of San Jose* for the proposition that Section 11165.7 (b), which states "training in the duties imposed by this article shall include . . .," is somehow "plainly discretionary." 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." Construing subdivision (b) as plainly discretionary, but subdivision (c) as not, is incongruous. Nor can it be concluded that since reporting on the failure to train is mandated, that training is then discretionary. Both training and reporting are required as mutually exclusively parts of Section 11165.7.

3. Assisting in investigations (Section 11165.14 and 11174.3).

The DSA (20) concludes that the "plain language" of Section 11165.14 "does not require any unique activities of school district personnel." The Section requires local child protective agency personnel to investigate complaints filed by parents against a school employee or other person who commits child abuse at a schoolsite. 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.

Section 11174.3 allows the alleged student victim of child abuse to select a school staff member to be present at interviews for the personal comfort of the student. The DSA (21) concludes that since the staff member may decline the request, the activity is not mandated and not reimbursable. 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).

4. Employee certifications (Section 11166.5)

Section 11166.5 requires, as a prerequisite to employment, that mandated reporters enumerated by the statute sign a statement on a form provided by the employer acknowledging the employee's duties under CANRA. This DSA (24) concludes that this mandate applies "generally to all residents and entities in the state." It does not. The Section applies to mandated reporters of child abuse. The statutory enumeration of mandated reporters is nearly all government employees, and the absolute number of persons who are mandated reporters would probably be government employees as a super majority. However, the DSA concludes that mandated reporters are "elevators" which are ubiquitous in their public location and purpose. The mandated reporting system is the basis of a distinctly governmental and penal system of investigation of child abuse, which is not within in the purview of private persons or entities.

This Section also specifically enumerates a new class of reporters, "child care custodians," to specifically include private and public school personnel. The fact that private school teachers are included does not make this a law of general application since this issue was decided in the *Long Beach* voluntary integration case.

CERTIFICATION

I hereby declare, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own knowledge or information or belief.



Keith Petersen, President
SixTen and Associates

C: Commission mailing list last updated 10/16/07

1 **DECLARATION OF SERVICE**

2
3 Re: 01-TC-21 San Bernardino CCD
4 Chapter 226, Statutes of 1975, et al
5 Child Abuse and Neglect Reporting
6

7 I declare:

8
9 I am employed in the office of SixTen and Associates, which is the
10 appointed representative of the above named claimants. I am 18 years of
11 age or older and not a party to the entitled matter. My business address is
12 3841 North Freeway Blvd, Suite 170, Sacramento, CA 95834.
13

14 On the date indicated below, I served the attached letter dated November
15 7, 2007, to Paula Higashi, Executive Director, Commission on State
16 Mandates, to the Commission mailing list updated 10/16/07 for this test
17 claim, and to:
18

19 Paula Higashi, Executive Director
20 Commission on State Mandates
21 980 Ninth Street, Suite 300
22 Sacramento, CA 95814
23

24 **U.S. MAIL:** I am familiar with the business
25 practice at SixTen and Associates for the
26 collection and processing of
27 correspondence for mailing with the
28 United States Postal Service. In
29 accordance with that practice,
30 correspondence placed in the internal mail
31 collection system at SixTen and
32 Associates is deposited with the United
33 States Postal Service that same day in the
34 ordinary course of business.
35

FACSIMILE TRANSMISSION: On the
date below from facsimile machine
number (858) 514-8645, I personally
transmitted to the above-named person(s)
to the facsimile number(s) shown above,
pursuant to California Rules of Court
2003-2008. A true copy of the above-
described document(s) was(were)
transmitted by facsimile transmission and
the transmission was reported as
complete and without error.

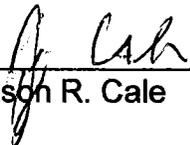
36 **OTHER SERVICE:** I caused such
37 envelope(s) to be delivered to the office of
38 the addressee(s) listed above by:
39

A copy of the transmission report issued
by the transmitting machine is attached to
this proof of service.

40 _____
(Describe)
41
42

PERSONAL SERVICE: By causing a true
copy of the above-described document(s)
to be hand delivered to the office(s) of the
addressee(s).

43 I declare under penalty of perjury under the laws of the State of California that the
44 foregoing is true and correct and that this declaration was executed on November 7, 2007,
45 at Sacramento, California.
46

47 
48 _____
Jason R. Cale

Commission on State Mandates

Original List Date: 7/3/2002
Last Updated: 10/16/2007
List Print Date: 10/17/2007
Claim Number: 01-TC-21
Issue: Child Abuse and Neglect Reporting

Mailing Information: Draft Staff Analysis

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.)

Mr. Raymond Eberhard

San Bernardino Community College District
114 South Del Rosa Drive
San Bernardino, CA 92408

Claimant

Tel: (909) 382-4021

Fax: (909) 382-0174

Mr. Larry Bolton

Department of Social Services (A-24)
744 P Street, MS 17-27
Sacramento, CA 95814

Tel: (916) 657-2353

Fax: (916) 657-2281

Ms. Carol Bingham

California Department of Education (E-08)
Fiscal Policy Division
1430 N Street, Suite 5602
Sacramento, CA 95814

Tel: (916) 324-4728

Fax: (916) 319-0116

Ms. Sandy Reynolds

Reynolds Consulting Group, Inc.
P.O. Box 894059
Temecula, CA 92589

Tel: (951) 303-3034

Fax: (951) 303-6607

Executive Director

State Board of Education
1430 N Street, Suite #5111
Sacramento, CA 95814

Tel:

Fax:

Mr. Robert Miyashiro

Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

Tel: (916) 446-7517

Fax: (916) 446-2011

Mr. Steve Smith

Steve Smith Enterprises, Inc.
3323 Watt Avenue #291
Sacramento, CA 95821

Tel: (916) 216-4435

Fax: (916) 972-0873

Mr. Leonard Kaye, Esq.

County of Los Angeles
Auditor-Controller's Office
500 W. Temple Street, Room 603
Los Angeles, CA 90012

Tel: (213) 974-8564

Fax: (213) 617-8106

Ms. Beth Hunter

Centration, Inc.
8570 Utica Avenue, Suite 100
Rancho Cucamonga, CA 91730

Tel: (866) 481-2621

Fax: (866) 481-2682

Mr. Steve Shields

Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

Tel: (916) 454-7310

Fax: (916) 454-7312

Ms. Harmeet Barkschat

Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Tel: (916) 727-1350

Fax: (916) 727-1734

Ms. Meg Halloran

Office of the Attorney General (D-08)
1300 I Street, 17th Floor
P.O. Box 944255
Sacramento, CA 95814

Tel: (916) 323-8549

Fax: (916) 322-2368

Mr. Jim Spano

State Controller's Office (B-08)
Division of Audits
300 Capitol Mall, Suite 518
Sacramento, CA 95814

Tel: (916) 323-5849

Fax: (916) 327-0832

Director

Department of Social Services (A-24)
744 P Street, MS 17-27
Sacramento, CA 95814

Tel: (916) 657-2353

Fax: (916) 657-2281

Mr. David E. Scribner

Scribner Consulting Group, Inc.
3840 Rosin Court, Suite 190
Sacramento, CA 95834

Tel: (916) 922-2636

Fax: (916) 922-2719

Mr. Arthur Palkowitz
San Diego Unified School District
Office of Resource Development
4100 Normal Street, Room 3209
San Diego, CA 92103-8363

Tel: (619) 725-7785

Fax: (619) 725-7564

Ms. Ginny Brummels
State Controller's Office (B-08)
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Tel: (916) 324-0256

Fax: (916) 323-6527

Ms. Jeannie Oropeza
Department of Finance (A-15)
Education Systems Unit
915 L Street, 7th Floor
Sacramento, CA 95814

Tel: (916) 445-0328

Fax: (916) 323-9530

Ms. Susan Geanacou
Department of Finance (A-15)
915 L Street, Suite 1190
Sacramento, CA 95814

Tel: (916) 445-3274

Fax: (916) 324-4888

Mr. J. Bradley Burgess
Public Resource Management Group
1380 Lead Hill Boulevard, Suite #106
Roseville, CA 95661

Tel: (916) 677-4233

Fax: (916) 677-2283

Ms. Juliana F. Gmur
MAXIMUS
2380 Houston Ave
Clovis, CA 93611

Tel: (916) 485-8102

Fax: (916) 485-0111

Mr. Keith B. Petersen
SixTen & Associates
3841 North Freeway Blvd., Suite 170
Sacramento, CA 95834

Claimant Representative

Tel: (916) 565-6104

Fax: (916) 564-6103

Mr. Erik Skinner
California Community Colleges
Chancellor's Office (G-01)
1102 Q Street, Suite 300
Sacramento, CA 95814-6549

Tel: (916) 322-4005

Fax: (916) 323-8245

Mr. Patrick Day
San Jose Unified School District
855 Lenzen Avenue
San Jose, CA 95126-2736

Tel: (408) 535-6572

Fax: (408) 286-4965